

# PROPERTY MAINTENANCE ORDINANCE

AN ORDINANCE PROVIDING A PROCEDURE TO DECLARE AS A PUBLIC NUISANCE PROPERTIES IMPROPERLY MAINTAINED, TO PROVIDE PROCEDURES FOR HEARING AND APPEAL, TO PROVIDE FOR ABATEMENT OF THE NUISANCE, TO PROVIDE FINES AND PENALTIES FOR VIOLATION OF THE ORDINANCE, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALAMO, GEORGIA that:

Whereas, there are found within the City of Alamo property conditions that are unsightly, that pose potential health and safety hazards to those within the city and that pose a threat to the general welfare of the citizens of the city; and

Whereas, the mayor and council of the City of Alamo desire to provide a procedure for declaring such conditions a public nuisance and to provide a remedy for abatement of such nuisances;

NOW THEREFORE the mayor and council of the City of Alamo find it necessary to adopt measures to assure the health, safety and well-being of the citizens of the City and others within the limits of the City and do hereby adopt this Property Maintenance Ordinance for such purposes.

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**Article I. General Provisions**

**1.01 Definitions.**

"Back yard" means that portion of property between a building and the back property line.

"Building" means any house, garage, duplex, apartment, condominium, stock cooperative, and other residential and nonresidential structures.

"City" means the city of Alamo.

"City Manager" means the City Manager or his designees.

"Front yard" means that portion of property between the street and a building.

"Owner" means any person owning property with the City or the lessee, tenant or other person having control or possession of the property.

"Person" means any individual, partnership, corporation, association or other organization, however formed.

"Property" means (1) all nonresidential zoned real property and any structure located on such property, referred to herein as nonresidential property; and (2) front yards, the unfenced portions of side yards, the unfenced portion of back yards and of corner lots, driveways, walkways, and sidewalks of all residential real property and shall include any building located on such property, referred to herein as residential property.

"Side yard" means that portion of property between the principal structure and the side property line.

"State of partial construction" means, since commencement of construction, construction has been suspended or abandoned for an unreasonable period of time, and the appearance of the building substantially detracts from the appearance of the immediate neighborhood or the condition of the building is detrimental to the public health, safety or welfare.

### **1.02 Enforcement authority designated—Civil actions available.**

Nothing in this chapter shall be deemed to prevent the Council from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from pursuing any other remedy available under applicable law. Violation of the provisions of this ordinance constitutes an infraction. The City Manager is designated as the enforcement authority.

### **1.03 Violation—Penalty.**

A. Any person, firm, or corporation violating, or causing or permitting to be violated, any of the provisions of this chapter shall be deemed guilty of an infraction.

B. Any person, firm, or corporation convicted of an infraction under the provisions of this chapter shall be punishable as follows: For the first offense within a twelve month period, a fine not less than \$100.00 and not more than \$250.00; for a second offense within a twelve month period, a fine not less than \$250.00 and not more than \$500.00. Any violation beyond the third conviction within a one (1) year period may be charged as a misdemeanor and the penalty for conviction of the same shall be a fine or imprisonment or both not to exceed a fine of \$1,000.00 or incarceration for six months.

C. Each person, firm, or corporation shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person and shall be punishable accordingly.

D. The City Manager shall have the power to designate by written order that particular officers or employees shall be authorized to enforce particular provisions of this chapter.

Officers or employees so designated shall have the authority to arrest persons who violate any of said provisions.

## Article II. Nuisances

### 2.01 Residential property.

It is unlawful for any person owning, leasing, renting, occupying or having charge or possession of any residential property in the city to maintain or to allow to be maintained such property in such manner that any of the following conditions are found to exist thereon for an unreasonable period of time and which are visible from a public street, except as may be allowed by any other provision of law, including provisions of city ordinances:

- A. The accumulation of dirt, litter or debris;
- B. Clothes lines or clothes hanging in front yards;
- C. Boxes, bins, containers, firewood, lumber, junk, trash, recyclables, salvage materials, building materials, landscaping materials, or other similar materials;
- D. Attractive nuisances dangerous to children including abandoned, broken, or neglected equipment, machinery, tools, refrigerators and freezers, hazardous pools, ponds, and excavations;
- E. Broken or discarded furniture, household equipment, electronic equipment and furnishings or shopping carts;
- F. Overgrown vegetation likely to harbor rats, vermin and other nuisances dangerous to public health, safety, and welfare, or obstructing a necessary view of drivers on public streets or private driveways;
- G. Weeds, dead, decayed, diseased or hazardous trees, fallen leaves and other vegetation constituting an unsightly appearance or a danger to public health, safety and welfare;
- H. Graffiti on the exterior of any building, fence, wall, automobile or other structure;
- I. Inoperable, derelict or junk motor vehicles or recreational vehicles, vehicle parts or other articles of personal property which are abandoned or left in a state of partial construction or disrepair;
- J. Mobile homes, recreational vehicles, utility trailers, unmounted camper tops, boats, cars, trucks, or other vehicles that are parked or stored in violation of the zoning provisions;

- K. Fences and walls which have become dilapidated or are in a state of disrepair;
- L. Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction or disrepair; and/or
- M. Improperly maintained sewer lines, including failure to properly connect to city sewer lines that run adjacent to the property, if such failure results in discharge above ground or detectable odor.

## **2.02 Nonresidential property.**

It is unlawful for any person owning, leasing, renting, occupying or having charge or possession of any nonresidential property in the city to maintain or to allow to be maintained such property in such manner that any of the following conditions are found to exist thereon for an unreasonable period of time and are visible from a public street, except as may be allowed by any other provision of law including provisions of city ordinances:

- A. The accumulation of dirt, litter, or debris;
- B. Boxes, bins, containers, firewood, lumber, junk, trash, recyclables, salvage materials, building materials, landscaping materials or other similar materials;
- C. Attractive nuisances dangerous to children including abandoned, broken, or neglected equipment, machinery, tools, refrigerators and freezers, hazardous pools, ponds, and excavations;
- D. Broken or discarded furniture, household equipment, electronic equipment, and furnishings or shopping carts;
- E. Overgrown vegetation likely to harbor rats, vermin and other nuisances dangerous to public health, safety, and welfare, or obstructing a necessary view of drivers on public streets or private driveways;
- F. Weeds, dead, decayed, diseased or hazardous trees, fallen leaves and other vegetation constituting an unsightly appearance or dangerous to public health, safety and welfare;
- G. Graffiti on the exterior of any building, fence, wall, automobile or other structure;
- H. Inoperable, derelict or junk motor vehicles or recreational vehicles, vehicle parts or other articles of personal property which are abandoned or left in a state of partial construction or disrepair;

I. Mobile homes, recreational vehicles, utility trailers, unmounted camper tops, boats, cars, trucks, or other vehicles that are parked or stored in violation of the zoning provisions;

J. Fences and walls which have become dilapidated or are in a state of disrepair;

K. Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction or disrepair; and

L. Improperly maintained sewer lines, including failure to properly connect to city sewer lines that run adjacent to the property, if such failure results in discharge above ground or detectable odor.

### **2.03 Declaration of public nuisance.**

Any property found to be maintained in violation of Section 2.010 or 2.020 is declared to be a public nuisance and shall be abated by rehabilitation, removal, demolition, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner provided by law.

## **Article III. Abatement Procedure**

### **3.01 Notification of nuisance.**

Whenever the City Manager determines that any property within the city is being maintained contrary to one (1) or more of the provisions of Sections 2.010 and 2.020, the City Manager shall give written notice, "notice to abate," to the owner of the property stating the section(s) being violated. Such notice shall set forth a reasonable time limit, in no event less than seven (7) calendar days, for correcting the violation(s) and may also set forth suggested methods of correcting the same. Such notice shall be served upon the owner in accordance with provisions of Section 3.030.

### **3.02 Administrative hearing—Generally.**

In the event the owner shall fail, neglect or refuse to comply with the notice to abate, the City Manager shall conduct an administrative hearing to ascertain whether the violation constitutes a public nuisance.

### **3.03 Notice of hearing.**

Notice of said hearing shall be served upon the owner not less than seven (7) calendar days before the time fixed for hearing. Notice of hearing shall be served in person if the person is found within the State, otherwise by first class mail, postage prepaid, to the owner's last known address. If the owner cannot be found within the State and the owner's mailing address is unknown, service may be made by tacking a notice on the

front door or front wall of the premises. Service shall be deemed complete at the time notice is personally served, deposited in the mail or posted by tacking as provided hereinabove. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below:

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

This is a notice of hearing before the City Manager (or his/her designees) to ascertain whether certain property situated in the City of Alamo, State of Georgia, known and designated as (insert street address), in said City, and more particularly described as (assessor's parcel number) constitutes a public nuisance subject to abatement by the rehabilitation of such property or by the repair, removal or demolition of buildings situated thereon. If said property, in whole or part, is found to constitute a public nuisance as defined in this Ordinance and if the same is not promptly abated by the owner, such nuisance may be abated by municipal authorities, in which case the cost of such rehabilitation, repair, removal or demolition will be assessed upon such property and such costs, together with interest thereon at the rate of 7% per annum, will constitute a lien upon such property until paid; in addition, you may be cited for violation of the provisions of the City ordinances and subject to a fine.

Said alleged conditions consist of the following: (Insert detailed description of conditions)

The methods of abatement are: (insert suggested means of abatement).

All persons having an interest in said matters may attend the hearing and their testimony and evidence will be heard and given due consideration.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Manager

Time and Date of Hearing:\_\_\_\_\_.

Location of Hearing:\_\_\_\_\_.

**3.04 Administrative hearing—Procedure.**

A. At the time stated in the notice, the City Manager shall hear and consider all relevant evidence, objections or protests, and shall receive testimony under oath relative to such alleged public nuisance and to proposed rehabilitation, repair, removal or demolition of such property. The hearing may be continued from time to time.

B. If the City Manager finds that such public nuisance does exist and that there is sufficient cause to rehabilitate, demolish, remove or repair the same, the City Manager shall prepare findings and an order, which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and

completed. The order shall include reference to the right to appeal set forth in Section 3.05 of this ordinance. A copy of the findings and order shall be served on all owners of the subject property in the same manner as provided in Section 3.030 of this ordinance. In addition, a copy of the findings and order shall be forthwith conspicuously posted on or near the property.

### **3.05 Appeal procedure.**

A. Any owner may appeal the City Manager's findings and order to the City Council ("Council"). Any appeal to the City Council must be in writing and must be made within thirty (30) days from the date of service of the decision of the City Manager. The request for an appeal to the City Council shall be addressed to the City Manager and shall be deemed served only when received by the city. Failure to properly serve the request for appeal to the City Council within the thirty (30) day period shall be deemed a waiver of the right to appeal the matter to the City Council and the decision of the City Manager shall become final.

The appeal shall contain:

1. A specific identification of the subject property;
2. The names and addresses of all appellants;
3. A statement of the appellant's legal interest in the subject property;
4. A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;
5. The date and signatures of all appellants; and
6. The verification of at least one (1) appellant as to the truth of the matters stated in the appeal.

B. As soon as practicable after receiving the appeal, the City Clerk shall set a date for the Council to hear the appeal, which date shall be not less than seven (7) calendar days nor more than thirty (30) calendar days from the date the appeal was filed. The City Clerk shall give each appellant written notice of the time and the place of the hearing at least five (5) calendar days prior to the date of the hearing, either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal. Continuances of the hearing may be granted by the Council on request of the owner for good cause shown, or on the Council's own motion.

### **3.06 Appeal hearing procedure.**



- A. All hearings shall be tape recorded.
- B. Hearings need not be conducted according to the technical rules of evidence.
- C. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
- D. Oral evidence shall be taken only on oath or affirmation.
- E. Irrelevant and unduly repetitious evidence shall be excluded.

### **3.07 Decision by City Council.**

Upon the conclusion of the hearing, the Council shall determine whether the property or any part thereof, as maintained, constitutes a public nuisance. If the Council so finds, the Council shall adopt a resolution declaring such property to be a public nuisance, setting forth its findings and ordering the abatement of the same by having such property rehabilitated, repaired, removed or demolished in the manner and means specifically set forth in the resolution. The resolution shall set forth the time within which such work shall be completed by the owner, in no event less than thirty (30) days. The decision and order of the Council shall be final.

### **3.08 Service of order to abate.**

A copy of the resolution of the Council ordering the abatement of said nuisance shall be served upon the owner(s) of the property in accordance with the provisions of Section 3.03. Upon abatement in full by the owner, the proceedings hereunder shall terminate.

### **3.09 Filing appeal of City Council's decision—Time limit.**

Any action filed in the Superior Court of Wheeler County appealing the Council's decision and order shall be commenced within thirty (30) calendar days of the date of service of the decision.

### **3.10 Nuisance finding—Procedure when no appeal or following appeal.**

In the absence of any appeal or pursuant to any final order after appeal, the property shall be rehabilitated, repaired, removed or demolished in the manner and means specifically set forth in the findings and order. In the event the owner fails to abate the nuisance as ordered, the City Manager shall cause the same to be abated by city

employees or private contract. The costs shall be billed to the owner, as specified in Section 3.11.

### **3.11 Abatement by city.**

A. If such nuisance is not abated as ordered within the abatement period, the City Manager shall cause the same to be abated by city employees or private contract. Absent consent to enter the subject property for the purpose of nuisance abatement, the City Manager shall direct the City Attorney to obtain the necessary judicial authority for entry and abatement purposes. The cost, including incidental expenses, of abating the nuisance shall be billed to the owner and shall become due and payable thirty (30) days thereafter. The term "incidental expenses" means and includes, but is not limited to, personnel costs, both direct and indirect; costs incurred in documenting the nuisance; the actual expenses and costs of the city in the preparation of notices, specifications and contracts, and in inspecting the work; and the costs of printing and mailing required hereunder.

B. A person shall not obstruct, impede, or interfere with the City Manager, or his representative, or with any person who owns, or holds any interest in the property in the performance of any necessary act preliminary to or incidental to carrying out an abatement order issued pursuant to this ordinance.

### **3.12 Demolition restrictions.**

No property shall be found to be a public nuisance pursuant to this ordinance and ordered demolished unless the order is based on competent sworn testimony and it is found that in fairness and in justice there is no reasonable way other than demolition to correct such nuisance.

## **Article IV. Lien Procedure**

### **4.01 Record of cost of abatement.**

The City Manager shall keep an account of the cost, including incidental expenses, of abating such nuisance on each separate lot or parcel of land where the work is done by the city and shall render an itemized report in writing to the City Council showing the cost of abatement, including the rehabilitation, demolition or repair of said property, including any salvage value relating thereto; provided, that before the report is submitted to the City Council, a copy of the same shall be posted for at least five (5) days upon or in front of such property, together with a notice of the time when said report shall be heard by the City Council for confirmation. A copy of the report and notice shall be served upon the owners of said property in accordance with the provisions of Section 3.030 at least five (5) calendar days prior to submitting the same to the City Council. Proof of the posting and service shall be made by affidavit filed with the City Clerk. The Council may make such modifications to the report as it may deem necessary, after which such report shall be confirmed by resolution. The confirmation of

the report shall give rise to a special lien on the property upon which the nuisance was abated.

#### 4.02 Recovery of abatement expenses.

The enforcement of its lien and the procedures governing the recovery of the city's costs of abating nuisances shall be the same as the procedures for levy and sale pursuant to judgment liens. A levy shall be made upon the property by the Chief of Police or an officer delegated by him, and the property shall be advertised and sold in the same manner as provided for executions and judicial sales.

#### 4.03 Notice of lien.

A notice of lien shall be recorded in the office of the Clerk of Superior Court of Wheeler County in form substantially as follows:

#### NOTICE OF LIEN

(Claim of City of Alamo)

Pursuant to the authority vested by the provisions of Section 3.10 of the City of Alamo Property Maintenance Ordinance, the City Manager of the City of Alamo did on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, cause the property hereinafter described to be rehabilitated, or the building or structure on the property hereinafter described to be repaired or demolished, in order to abate a public nuisance on said real property; and the City Council of the City of Alamo did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, assess the cost of such rehabilitation, repair or demolition upon the real property hereinafter described by resolution; and the same has not been paid; and the City of Alamo does hereby claim a lien for the cost of such rehabilitation, repair, or demolition in the amount of said assessment, to wit: the sum of \$\_\_\_\_\_; and the same shall be a lien upon said real property until the same has been paid in full and discharged of record. The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Alamo, County of Wheeler, State of Georgia, and particularly described as follows:

(description)

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
City Manager, City of Alamo

## Article V. Miscellaneous Provisions

### 5.01. Cumulative Effect.

This ordinance shall be cumulative of all other ordinances which may govern the subject matter hereof, and to the extent that such ordinances or parts of ordinances are in conflict with the provisions of this ordinance, the city may proceed under either ordinance to accomplish the purposes of this ordinance.

### 5.02. Severability.

In the event any section, provision or portion of this ordinance shall be declared unconstitutional or unenforceable in whole or in part, such invalidity shall not have the effect of destroying or impairing the validity of the remaining parts of this ordinance, and the remaining portion shall remain in full force and effect.

### 5.03. Effective Date.

This ordinance shall take effect from and after the 15<sup>th</sup> day of March, 2021.

Attest: Maive Cavilla  
CITY CLERK

Pamela Lee  
MAYOR