



Judicial In Rem Code Enforcement and Judicial In Rem Tax Sales: Optimum Tools to Combat Vacancy and Abandonment in Atlanta

*Center for Community Progress Report to the City of Atlanta
2014 Technical Assistance Scholarship Program Grant*



December, 2014

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This report was prepared by the Center for Community Progress. For additional information, please contact the authors listed below or Kim Graziani, Vice President and Director of National Technical Assistance.

Frank Alexander
Co-Founder and Senior Advisor
Center for Community Progress

Emory Law School
1301 Clifton Road
Atlanta, GA 30322
frank.alexander@emory.edu

Sara Toering
General Counsel
Center for Community Progress

Emory Law School
1301 Clifton Road
Atlanta, GA 30322
stoering@communityprogress.net

Kim Graziani, Vice President and
Director of National Technical Assistance
Center for Community Progress
National Office
1001 Connecticut Avenue N.W.
Suite 1235
Washington, D.C. 20036
877-542-4842
www.communityprogress.net

TABLE OF CONTENTS

I. INTRODUCTION AND EXECUTIVE SUMMARY	1
II. THE COSTS OF VACANCY AND ABANDONMENT IN THE CITY OF ATLANTA	3
III. CODE ENFORCEMENT: FIX IT UP OR PAY IT UP	5
A. Housing and Building Code Requirements and Voluntary Compliance	6
1. Property Maintenance Code and Inspection Process	
2. Observations on Code Requirements and Initial Inspection Process	
3. Recommendations on Code Requirements and Initial Inspection Process	
B. Criminal Enforcement of Code Violations: Article I	9
1. Criminal Process and Solicitor Enforcement	
2. Observations Regarding Article I Criminal Code Enforcement	
3. Recommendations Regarding Article I Criminal Code Enforcement	
4. 123 Atlanta Street and Article I Criminal Code Enforcement	
C. Code Enforcement in Absence of Compliance: Article III	15
1. Compliance Resolution Team and Administrative In Rem Review Board	
2. Observations on the Article III In Rem Review Board Process	
3. Recommendations Regarding Article III In Rem Review Board	
4. 123 Atlanta Street and Article III In Rem Review Board Process	
D. Article V Judicial In Rem Code Enforcement: Fix it Up or Pay it Up	20
1. Article V Process	
2. Observations on the Article V Judicial In Rem Code Enforcement Process	
3. Recommendations Regarding Article V Code Enforcement	
IV. DELINQUENT PROPERTY TAX ENFORCEMENT: PAY IT UP OR GIVE IT UP	24
A. Note on Non-Judicial Delinquent Tax Enforcement	25
B. Judicial In Rem Tax Sales	25
1. Combination of Article V Code Liens with Judicial In Rem Tax Sales	

2. Observations Regarding Judicial In Rem Code Enforcement Coupled With Judicial In Rem Tax Sales	
3. Recommendations Regarding Judicial In Rem Code Enforcement Coupled With Judicial In Rem Tax Sales	
4. 123 Atlanta Street and Judicial In Rem Code Enforcement Coupled With Judicial In Rem Tax Sale	
V. SUMMARY OF RECOMMENDATIONS	31
VI. CONCLUSION	34

APPENDICES: KEY DOCUMENTS

- A. Article I Atlanta Housing Code (Code Enforcement with Criminal Process)
- B. Article II Atlanta Housing Code (Requirements for Vacant Properties)
- C. Article III Atlanta Housing Code (In Rem Review Board)
- D. Article V Atlanta Housing Code (Judicial In Rem Code Enforcement)
- E. OCGA § 41-2-9 (Super-Priority Code Lien Statute)
- F. OCGA § 48-4-75 et seq. (Judicial In Rem Tax Sale Statute)

I. INTRODUCTION AND EXECUTIVE SUMMARY

In response to concerns raised by citizens and local government leaders, a taskforce of City of Atlanta leaders led by the Department of Planning and Community Development (“Vacant and Abandoned Property Working Group”) applied for and was granted a scholarship from the *Center for Community Progress* (“*Community Progress*”), the nation’s premier experts on best practices and effective policy responses to vacancy and abandonment. In its scholarship application, the City of Atlanta requested assistance from *Community Progress* in identification of the optimum legal and policy tools to address vacant, abandoned and code-delinquent properties in communities throughout the City of Atlanta. This report is the result of that scholarship application and it was authored by *Community Progress* Co-Founder and Senior Advisor Frank Alexander, and General Counsel Sara Toering—both of whom are located in the Atlanta office of *Community Progress*. Invaluable research assistance was also provided by *Community Progress* Legal Fellow and Emory Law student Gregory Richardson.

This report identifies the optimum legal and policy response to vacant, abandoned and substandard properties—single family, multi-family and commercial units—in light of the tools *currently available* to the City of Atlanta. The report is informed by our experience with similar systems across the country, by analysis of existing Atlanta legal and policy tools, by interviews with key stakeholders, and by the tenacious and coordinated work of the Vacant and Abandoned Property Work Group. While a range of systems and policy tools may impact vacancy, abandonment and the presence of housing and building code violations, the focus of this report is on the optimum use of code enforcement—typically the first line of defense in the face of vacancy and abandonment—and delinquent tax enforcement to make an impact in neighborhoods. Although additional policies that may exacerbate or ameliorate vacancy and abandonment, such as the sale of tax liens, or the use of a blight tax or a conservatorship program, are certainly worthy of review and analysis, our task did not include an analysis of such policies.

The most important finding described in this report is that the City of Atlanta *already has at its disposal* the necessary legal and policy tools to maximize the possibility of forcing property owners to **fix up** problem properties, **pay up** taxpayer expended funds spent on such properties, or **give up** problem properties to responsible public or private ownership. A tool called Judicial In Rem Code Enforcement has been on the books in the Atlanta Code for several years—it has simply never been utilized effectively. Similarly, state law has long authorized an effective delinquent tax enforcement tool that may be used in conjunction with Judicial In Rem Code Enforcement—the Judicial In Rem Tax Sale. Instead of utilizing these efficient, effective civil tools to encourage the return of vacant, abandoned property to productive use, the City of Atlanta has focused its code enforcement efforts on a criminal process that is burdensome and expensive, and delinquent taxes are currently enforced utilizing a non-judicial process that provides little opportunity to positively impact problem properties. The current criminally focused code enforcement process is typically impossible to enforce in the face of the majority of code delinquent properties that are owned by corporate, indigent or out-of-state owners, and it provides no means to attach public funds expended as a priority debt on the property that may force a property transfer to responsible hands.

This report describes how Judicial In Rem Code Enforcement and Judicial In Rem Tax Sale procedures work, recommends abandoning criminal code enforcement procedures in favor of these existing civil tools, and makes specific recommendations for the use of these tools in concert with one another on vacant, abandoned and code delinquent properties throughout the City.

Because these technical legal and policy tools are often difficult to understand, let alone articulate and implement, we describe the existing and recommended code enforcement processes through the story of a fictional property at 123 Atlanta Street. While 123 Atlanta Street is fictional, this hypothetical vacant, abandoned and code delinquent property is emblematic of thousands of similar properties scattered throughout Atlanta. It is our hope that the story of 123 Atlanta Street, traced throughout this report, might generate understanding and inspire thoughtful comments and questions from the wide variety of stakeholders who seek to strengthen the ability of code enforcement to make positive change in Atlanta neighborhoods.

The utility of the observations and recommendations contained in this report is to be determined by the Vacant and Abandoned Properties Working Group and the broad range of communities and constituencies in Atlanta. Our task has been simply to assess the legal and policy tools as we see them from an “outside” perspective, based on our experiences in multiple jurisdictions around the country. Our goal has been to describe the optimum legal and policy tools available to Atlanta in a manner that is accessible to legal and non-legal audiences so that the broadest possible range of leaders and stakeholders might make meaningful contributions to the decision and implementation process for code enforcement and delinquent tax enforcement in Atlanta moving forward.

II. THE COSTS OF VACANCY AND ABANDONMENT IN THE CITY OF ATLANTA

Vacancy and abandonment are a dangerous and ubiquitous presence in some of Atlanta's most treasured and historic neighborhoods. According to a recent windshield analysis of residential parcels conducted by APD Solutions for the City of Atlanta and described in the resulting Strategic Community Investment (SCI) report, Atlanta's neighborhoods are home to approximately 17,600 vacant parcels and lots—a 12.3% vacancy rate city-wide.¹ Many of these vacant lots and structures are concentrated in a few neighborhoods that stretch from the northwest to the southeast of the City.²



WHAT CAN THE CITY OF ATLANTA DO TO FIX THIS? 123 ATLANTA STREET

Vacancy and abandonment, and the corresponding ills of tax delinquency and mortgage foreclosure, impose tremendous and varied costs on Atlanta neighborhoods. Atlanta public officials estimate that the total cost to remediate existing code violations on vacant and abandoned properties in the City of Atlanta is approximately \$40 million dollars.³ In addition to the dollars required to simply remediate existing violations, additional public costs associated with vacant and abandoned structures, including costs associated with police, fire, and lost property tax revenue, overwhelm limited public resources.

Atlanta is not alone in facing these challenges. Destabilizing levels of vacancy and abandonment are no longer limited to our former industrial cities or urban cores; vacant and abandoned properties that impose harm on neighbors and neighborhoods are a growing concern for all communities large and small, urban and rural, from the Rust Belt to the Sun Belt. The U.S. Government Accountability Office stated in a 2011 study that the number of non-seasonal vacant units nationwide increased 51% between 2000 and 2010.⁴ One recent study by the Federal Reserve Bank of Cleveland found that vacant, tax delinquent and foreclosed parcels lowered property values of other parcels within 500 feet by 9.4%.⁵ A 2010 Philadelphia study found that vacant, blighted structures reduced property values by 6.5% city-wide and by 20% in some neighborhoods (a loss of 3.6 billion in household wealth throughout the city).⁶

Local government, non-profit, business and community leaders are increasingly sounding the alarm on the harms caused by vacant and abandoned structures and the impediments that vacancy and abandonment pose to neighborhood stabilization and revitalization. Residents and neighbors are asking hard questions and demanding solutions.

This report describes two key tools in the City of Atlanta (“City”) local government toolbox that may be utilized to address vacancy and abandonment: Article V Judicial In Rem Code Enforcement coupled with the Judicial In Rem Tax Sale. The analysis below offers a series of observations and recommendations for effective, efficient and equitable utilization of these tools in concert with one another and can be described, in view of a single, vacant, abandoned, code delinquent property as: **fix it up, pay it up, or give it up!**

Current state law and city housing and building code ordinances require property owners to maintain property at a certain safe and reasonable standard. Article V of the Atlanta housing code provides a powerful legal tool, Judicial In Rem Code Enforcement, to require owners of vacant, abandoned sub-standard properties to **fix up** their property, or **pay up** the costs expended by the public to secure and maintain the property. These tax payer funded costs include everything from police department costs, costs associated with attorney and court filing fees against the property, and costs expended to secure, demolish, or maintain the property. If owners fail to **fix up** the property or **pay up** the public costs imposed by their vacant, abandoned or substandard parcel, then Article V Judicial In Rem Code Enforcement provides an avenue to add the public costs expended on a property as a “super-priority lien” to the tax bill associated with the property.

Collection of the Article V code lien costs through the Judicial In Rem Tax Sale enforcement process will then force owners to either **pay up** the code lien costs in conjunction with the property taxes, or **give up** the property through the Judicial In Rem Tax Sale. At this tax sale, the property is sold, for an amount not less than all back taxes and code enforcement costs, to the highest bidder, or transferred to the City of Atlanta or another public entity such as the Land Bank in the absence of any private bids.

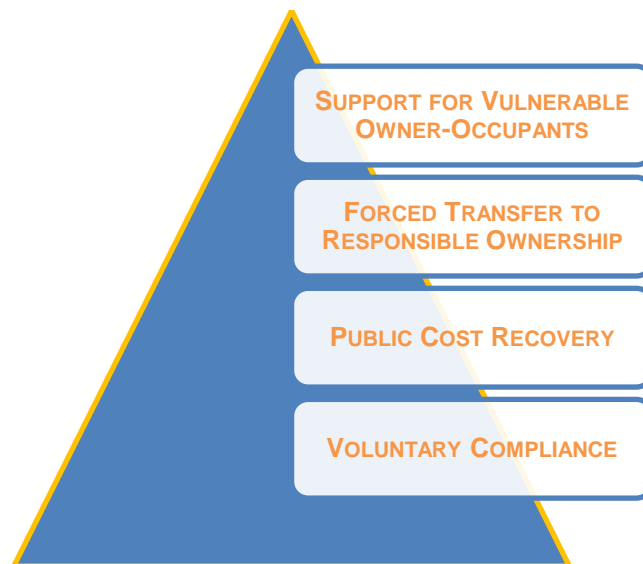
It is important to note from the outset that while each of these tools offers the public some means to address vacant, abandoned sub-standard structures that harm communities, no one tool is a silver bullet. Vacancy and abandonment are rooted in complex economic,

political and social dynamics and reformation of these systems requires a similarly complex and multi-faceted approach. Our task in this report is simply explain the optimum legal and policy tools available to the City to take action on vacant properties, and to help ensure that policy leaders, City staff, elected officials and community members share a common understanding of these tools.

III. CODE ENFORCEMENT: FIX IT UP OR PAY IT UP

The first line of defense against vacancy and abandonment in the local government toolbox is enforcement of the various housing and building codes that apply to all real property throughout the City. An efficient, effective, and equitable code enforcement system is capable of accomplishing at least one of the following goals in the face of every housing and building code violation: 1) interventions that result in voluntary compliance (remediation of the violation) by the owner of a non-compliant property, 2) full recovery of public expenditures for remediation from the property owner responsible for code violations at issue, 3) the ability when necessary to force a transfer of ownership of property from non-compliant owners to responsible owners and, 4) significant and wide-ranging supportive programs for low-income, elderly and other vulnerable owner occupants who do not have the means to cure code violations.⁷

FOUR ELEMENTS OF EFFECTIVE, EFFICIENT, EQUITABLE CODE ENFORCEMENT



A. Housing and Building Code Requirements and Voluntary Compliance

1. Property Maintenance Code and Inspection Process

City property owners are required to maintain their properties in accordance with locally adopted housing and building codes and to ensure properties do not cause harm to other members of the public. The Atlanta Housing Code contains a number of common sense provisions requiring, for example, that owner-occupied residential structures be connected to appropriate water and sewer lines and have smoke detectors.⁸ In addition, the Housing Code outlaws a series of conditions described as “Highly Hazardous” including, for example, defective electrical or other systems that “endanger or insufficiently protect health, safety or general welfare of the occupants.”⁹

Reflecting the fact that vacant and abandoned properties pose particular risks and impose particular costs on neighborhoods, the Housing Code outlines a number of requirements for the maintenance of vacant structures.¹⁰ It is illegal for property owners to allow or cause a structure to be vacant and unsecured, and a vacant and unsecured structure is defined as a highly hazardous condition under the Housing Code.¹¹



VACANT AND UNSECURED STRUCTURE

As a general matter, all windows and exterior doors of vacant structures must be secured with plywood or steel-based boarding materials (“boarded”) and the exterior of the property must remain in compliance with all code provisions.¹² An appropriately boarded vacant structure that is in compliance with all exterior code provisions,¹³ including a yard that is free of junk and debris, and exterior walls that are free of holes and decay,¹⁴ is known colloquially in Atlanta as a structure that is “cleaned and closed.”



CLEANED AND CLOSED VACANT STRUCTURE

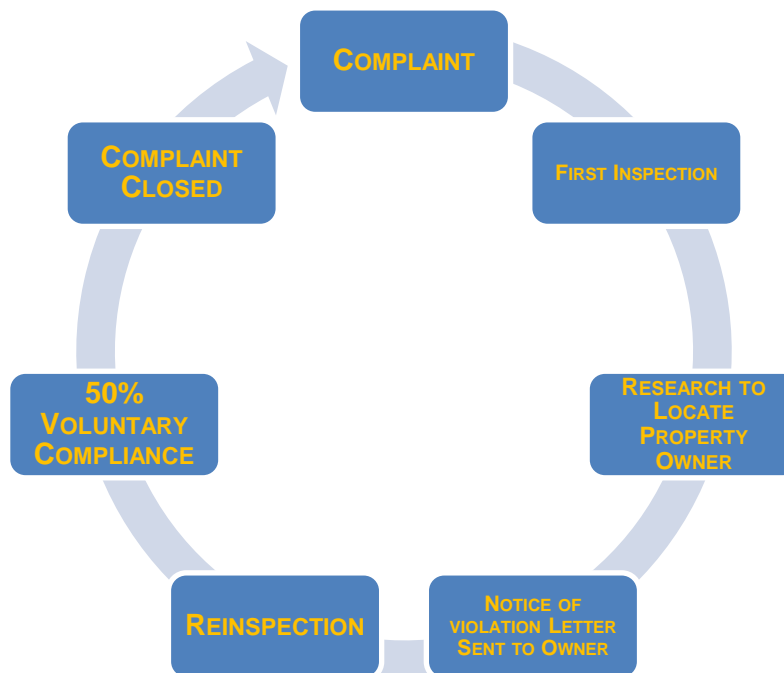
The Atlanta Housing Code sets out various enforcement mechanisms by which the City can hold property owners responsible for property maintenance and for cleaning and closing vacant properties. Authority and responsibility for the enforcement of housing and building codes lies with the Code Enforcement Section of the Atlanta Police Department (“Code Enforcement Section”).¹⁵ Code enforcement has been under the command of the Atlanta Police Department since FY 2012.¹⁶ Code enforcement authorities are authorized to inspect property, issue notices to correct code violations and also issue criminal citations requiring a court appearance and correction of violations.¹⁷

The Code Enforcement Section operates on a complaint driven model and responds to an average of 700 complaints per month.¹⁸ Complaints remain “open” until code enforcement staff are able to confirm that violations are no longer present. As of June 24, 2014 there were 3300 open code enforcement complaints as reported by the Code Enforcement Section.¹⁹

Most code enforcement cases begin when a complaint comes in over the phone or through the Code Enforcement Section website. Code enforcement front desk staff creates a complaint and assigns that complaint a number in the code enforcement database. The complaint is then automatically assigned to a code enforcement supervisor, and that supervisor will assign the case to a code enforcement inspector. For those cases that are based on property maintenance complaints, an inspection must occur within 10 days.²⁰ Complaints of conditions defined as “highly hazardous” under the Housing Code must be inspected within 48 hours. Upon completion of an inspection, including taking and cataloging photographs of the parcel at issue, the code enforcement officer will proceed to take appropriate enforcement steps described in more detail below.

In addition to inspections driven by complaints from owners, neighbors and other stakeholders, the Code Enforcement Section is authorized to develop and complete systemic, periodic, area-wide inspections for any particular community, or with a focus on a particular type of building stock including rental properties.²¹

When property maintenance violations are identified upon inspection, code enforcement officers post a placard on the property identifying violations that are present. In addition, a “notice of violation letter” is sent to property owners notifying them of the violation(s), including any accompanying fines, the deadline for the property owner to cure the violation and the date the inspector will return for a follow-up inspection. When an inspector finds compliance upon re-inspection, photographs are taken and cataloged and the complaint is “closed” and marked as such in the code enforcement database. During the first six months of 2014, the Code Enforcement Section issued 1687 notices of violation, and 899 of those notices (53%) resulted in voluntary compliance by the property owner by the date of the second inspection.²² Violation notices served to owner-occupants were most likely to generate owner-compliance.²³



2. Observations on Code Requirements and Initial Inspection Process

The current pace and process of the Code Enforcement Section appears to generate compliance and code remediation after an initial inspection in approximately 50% of the cases. Inspections typically occur well within the time-frame required by the Housing Code and the compliance generated in response to the placards posted on the property and notice of violation letters reflects one of the key elements of an efficient code enforcement system: voluntary compliance.

3. Recommendations on Code Requirements and Initial Inspection Process

We recommend the City build on the strengths and successes generated at this stage of the existing code enforcement process and consider the following options:

- a. Amend Housing Code to issue fines against owners upon failure to comply and remediate property maintenance violations after first inspection, and enforce all fines as liens against the property pursuant to appropriate court processes.
- b. Amend Housing Code to ensure that fully loaded costs associated with inspection and early code enforcement activities are adequately reflected in the cost of any initial fines issued against code delinquent properties.
- c. Amend Housing Code to clarify that fines issued in response to a first inspection that identifies code violations are civil in nature and do not implicate any criminal penalties.
- d. Amend Housing Code to ensure fines assessed for code violations may be attached as a lien to the property and collected upon sale or transfer of property.
- e. Institute proactive, non-complaint driven, area-wide inspections in targeted neighborhoods. Consider beginning this proactive program in strong-market communities with high rates of owner-occupancy most likely to generate voluntary compliance in response to a simple inspection and notice of violation letter.
- f. Separately track code violations and compliance rates on various categories of properties including: 1) vacant structures, 2) occupied multi-family structures, 3) renter-occupied single family structures, and 4) owner-occupied properties. Identify vulnerable owner-occupants of code delinquent properties without the means to complete necessary remediation and immediately refer such owners to the Compliance Resolution Team (described below), the Atlanta Office of Housing or other City departments who may provide grant and other assistance to such owners to complete repairs.
- g. Utilize fees generated from proactive inspection program to support code enforcement activities throughout the City and to support code remediation assistance for low-income, senior-citizen and other vulnerable owner occupants.

B. Criminal Enforcement of Code Violations: Article I

1. Criminal Process and Solicitor Enforcement

Where an initial inspection and notice of violation letter fails to generate compliance, or where conditions observed on a first inspection of a property are “highly hazardous,” the Code Enforcement Section currently utilizes the criminal procedures laid out in Article I of the

Housing Code to try and generate compliance or to recover public funds expended on a given parcel.

If a property owner fails to cure a violation before a second inspection, or if the code enforcement inspector finds highly hazardous conditions in her first inspection, then under the Article I process currently utilized by the City, the code enforcement officer must issue a criminal citation charging the property owner with code violations and directing the owner to appear before the Atlanta Municipal Court to answer those charges.²⁴ The criminal nature of the citation requires the Code Enforcement Section to go to great lengths to locate and serve owners—absentee, corporate or otherwise—**personally** with notice of the citation and direction to appear in court. To accomplish this personal service, the Code Enforcement Section must conduct research to locate the owner or owners of the problem property. If the assigned code enforcement officer or appropriate supervisor is able to locate a property owner/s through internet research, public record search or other means, then the citation is served to the identified owners in person. Posting notice of the citation on the property or sending the citation by first class mail is insufficient.

If a property owner is successfully served with a citation, then at this stage the code enforcement case is moved to the Office of the Solicitor and the property is inspected once again. The Atlanta Solicitor's code enforcement legal staff prosecutes all code violation cases and at the specified hearing date the solicitor presents evidence to the Municipal Court of the charged violations.²⁵ Indigent property owners are assigned legal assistance from the Office of the Public Defender. Upon reviewing any evidence and hearing from all parties, the Court determines the conditions it finds are in violation of the Housing Code, orders the cure of those violations, and imposes penalties ranging from fines of at least \$250 to imprisonment for property maintenance violations, and fines of at least \$500 to imprisonment for highly hazardous violations.²⁶ All fines are imposed against property owners individually. None of the Article I fines or costs are attached as a lien to the problem property itself.

The Code Enforcement Section reports that less than ten code enforcement cases in the last fifteen years resulted in a property owner actually going to jail.²⁷ As of June 14, of the 3300 open code enforcement cases, some small portion of which are at the Solicitor's Office enforcement stage, property owners simply failed to appear in court in at least 400 cases.²⁸

ARTICLE I CRIMINAL CODE ENFORCEMENT PROCESS



2. Observations Regarding Article I Criminal Code Enforcement

Despite the determined efforts of the Code Enforcement Section and the Office of the Solicitor, the criminal nature of Article I code enforcement processes are generally failing to satisfy any of the elements of an effective code enforcement system. The criminal sanctions are not inspiring voluntary compliance, public costs are not being recovered, no code liens are attached to the property to provide for a forced transfer in ownership, and vulnerable owners without the means to cure violations face inequitable criminal penalties.

Housing and building code enforcement by criminal process is inefficient. Because the penalties for code violations under Article I currently utilized by code enforcement and the Office of the Solicitor include the possibility of criminal sanctions,²⁹ code violation citations must be personally served. Such personal service is costly and often difficult or impossible to accomplish—particularly where owners identified are corporations or out-of-state interest holders. When individuals with ownership interests in the property are able to be located but are out-of-state or corporate owners, criminal sanctions are typically impossible to establish either because a corporation cannot be sent to jail, or because owners simply fail to appear in court at all. Finally, up to this point in the process, significant public funds have been expended without any cost recovery, or indeed without a single remediation dollar spent on the property conditions that are actively harming neighborhoods and neighbors.

Housing and building code enforcement by criminal process is ineffective. The most problematic properties with the most severe code violations tend to be those properties that are vacant, abandoned and seriously sub-standard or hazardous. Such vacant properties are precisely those most likely to be owned in some fashion by an out-of reach, corporate, absent, or even deceased owner. Even when criminal sanctions or associated fines are successfully prosecuted and attached as a liability against an individual or corporation, none of these fines attach to the problem property itself as a lien or collectable debt against the property. Thus neither the Code Enforcement Section nor the Office of the Solicitor is able to force a transfer of vacant, abandoned and hazardous structures.

Housing and building code enforcement by criminal process is inequitable. Attaching criminal penalties to code violations create a system ripe for inequitable scenarios—no matter how well intended. In some cases, vulnerable owner occupants are easily located for purposes of personal service, but unable to cure violations due to their lack of means. In this scenario, the Office of the Public Defender is called in to represent such owners in court proceedings, and significant resources are unnecessarily expended to avoid the threat of criminal penalties. Not surprisingly, the Office of the Solicitor and the Municipal Court do not endeavor to place vulnerable owner-occupants in jail for failing to cure code violations—but Public Defender Resources have been utilized because often the vulnerability of an owner-occupant is not apparent until the court proceedings have begun. The Office of the Public Defender also reports multiple code enforcement criminal cases where out-of-state or low-income descendants of deceased property owners, who passed on without a will, are located in a title search and served with a code enforcement citation. When these descendants attempt to respond to a code violation citation, they are surprised to learn they now face criminal penalties for failing to remediate code violations on a property they were often unaware they owned.

CODE ENFORCEMENT AND CRIMINAL PENALTIES: INEFFICIENT, INEFFECTIVE, INEQUITABLE

- ❖ **BURDENSOME/EXPENSIVE PERSONAL SERVICE OF PROCESS REQUIRED**
- ❖ **WORST VIOLATORS TYPICALLY IMPOSSIBLE TO LOCATE OR HOLD ACCOUNTABLE INCLUDING CORPORATE OWNERS/OUT-OF-STATE OWNERS/HEIRS**
- ❖ **RESULT OF CRIMINAL SANCTION IS PENALTY AGAINST INDIVIDUAL—NO LIEN ON PROPERTY ENABLING A FORCED TRANSFER IN OWNERSHIP OF THE PROPERTY TO RESPONSIBLE OWNERSHIP**
- ❖ **NEGLIGIBLE COST RECOVERY FOR PUBLIC EXPENDITURE OF RESOURCES—WITHOUT A SINGLE REMEDIATING ACTION ON THE PROPERTY ITSELF**
- ❖ **INDIGENT OWNER-OCCUPANTS OR HEIRS WITHOUT THE MEANS TO CURE VIOLATIONS ARE FACED WITH INEQUITABLE CRIMINAL SANCTIONS IMPLICATING PUBLIC DEFENDER RESOURCES**

3. Recommendations Regarding Article I Criminal Code Enforcement

Our recommendation in the face of the current criminal enforcement procedures utilized under Article I of the Housing Code is simple: Abandon all criminal enforcement for code violations and shift to an entirely civil system. Consider the following options:

- a. Abandon criminal citation procedure currently anticipated by Article I, and accompanying requirement of personal service of criminal citation.
- b. Issue fines against code delinquent properties that reflect fully loaded costs of code enforcement efforts to date. Ensure fines escalate over time with non-payment. Notify owners of the violation, duty to remediate, and accompanying fines by first class mail.
- c. Amend Housing Code to provide that in the face of non-compliance on non-highly hazardous violations, fines assessed are automatically filed as a lien on the property that must be satisfied upon sale or transfer of the property.
- d. In response to highly hazardous conditions revealed upon initial inspection conduct reasonable research of public records to locate the identity of probable owners and send notice of violations, with brief opportunity to cure, to owners by first class mail.
- e. In the face of non-compliance on highly hazardous structures, transfer code enforcement case to Office of Solicitor for immediate prosecution in accordance with Article V In Rem Code Enforcement process discussed below.

4. 123 Atlanta Street and Article I Criminal Code Enforcement

Consider the example of the fictional property located at 123 Atlanta Street. Where might the City end up as it attempts to “fix” this structure with criminal code enforcement?



Let’s assume that in response to a complaint from a neighbor the Code Enforcement Section opens a complaint and an inspector is assigned to inspect the property. Because the structure is vacant and unsecured, and because the back wall of the structure is almost completely rotted away, the inspector decides to immediately issue a “highly hazardous” criminal citation against the property owner.

A posted placard on the property itself generates no response and the inspector conducts several hours of research and is able to locate contact information for a limited liability corporation located in California that appears to own an interest in the property. The Code Enforcement Section expends considerable funds serving the registered agent of the corporation at her office in San Diego. As soon as the citation is served, the citation is booked and scheduled for initial hearing on the Municipal Court Agenda.

In advance of the court date noticed on the criminal code enforcement citation, the Code Enforcement Section conducts one more reinspection at 123 Atlanta Street. Because several months have passed since the initial complaint and inspection, the Solicitor finds that the condition of the property has significantly deteriorated, and it appears that one or more persons have been living in the structure illegally. It appears that a fire has burned out much of the back-half of the roof and left smoke damage on all remaining interior walls, and the property is not attached to any working water or sewer lines.

A few days after the court reinspection, at the hearing date on the citation associated with 123 Atlanta Street, the Solicitor presents evidence of ample code violations to the Court. Unfortunately, no party linked to ownership of 123 Atlanta Street appears in court. The Court finds that the violations exist and orders those violations at 123 Atlanta Street be cured, and issues accompanying fines against the LLC served with the citation. Those fines are never paid and the Solicitor's office would have to spend more funds attempting to enforce the fine than the amount of the fine itself. None of the fines or costs associated with the code enforcement case are a lien against 123 Atlanta Street. No party with any ownership interest in the property makes any attempt to cure the violations as ordered by the Court.

At this point in the life of 123 Atlanta Street, numerous funds have been expended by the City to investigate the property, to respond to police and fire calls to the property, and to instigate a court process in an attempt to hold the owner(s) responsible. None of those funds have been recouped by the City, the property itself has simply declined and continues to present a significant danger to the community, and neither the City nor any responsible private entity is any closer to actually owning the property and remediating the conditions.

C. Code Enforcement in Absence of Compliance: Article III

1. Compliance Resolution Team and Administrative In Rem Review Board

In the hundreds of active code enforcement cases where owners are unable to be located by code enforcement officers, the Code Enforcement Section currently relies on its Compliance Resolution Team to attempt to locate owners. Where the Compliance Resolution Team is unable to locate property owners, the Code Enforcement Section utilizes an administrative public board, the In Rem Review Board, to provide authorization for tax payer funded remediation, including cleaning and closing or demolition, on vacant, abandoned and highly hazardous properties.

When code enforcement officers are unable to locate property owners in order to serve citations or attempt to gain compliance, those complaints are transferred to the "Compliance Resolution" department of the Code Enforcement Section. The Compliance Resolution Team then spends the vast majority of its time and resources attempting to locate and encourage compliance from property owners who do not intend to comply or who are impossible to locate. The Compliance Resolution Team is unable to spend any of its limited resources assisting low-income or other vulnerable property owners with the will to remediate property but without the adequate means to do so. As of June 25, 2014, the Compliance Resolution Team had 500 citations in its pipeline and almost all involved vacant, abandoned, highly hazardous parcels owned by individuals or companies that are either impossible to locate or that are entirely non-responsive.³⁰

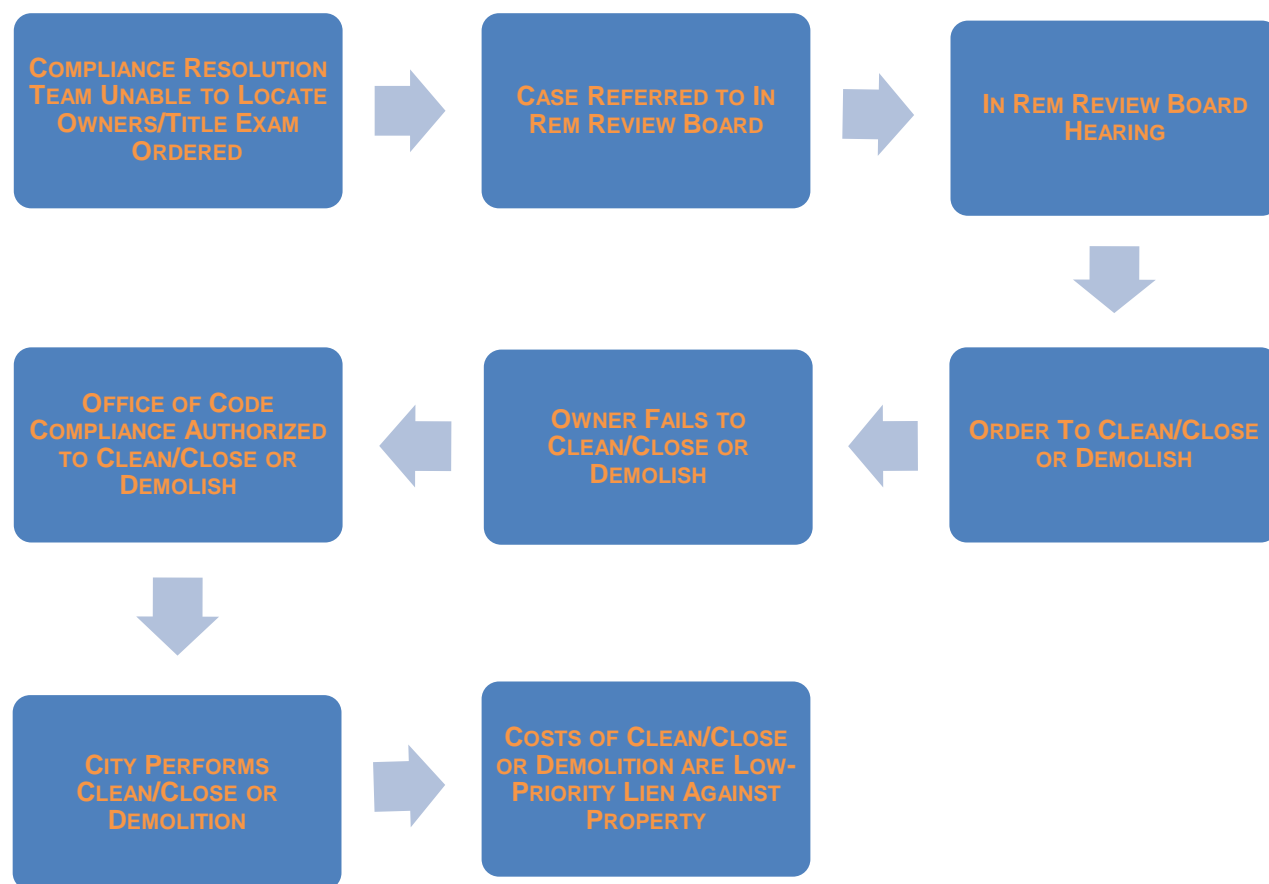
Where the Compliance Resolution Team is unable to locate a property owner to serve with a citation, and where the property at issue is a highly hazardous and uninhabitable property like the one at our fictional 123 Atlanta Street, the Compliance Resolution Team seeks a hearing on that property in front of the Atlanta In Rem Review Board created and authorized by Article III of the Housing Code. The Compliance Resolution Team orders a full

title exam on the property in preparation for the In Rem Review Board proceedings.³¹ The In Rem Review Board is composed of five members appointed by the mayor and confirmed by council.³² The In Rem Review Board holds hearings on each property presented to it and makes a series of findings including a) whether the property is fit for habitation, b) the percent of deterioration, c) the value of the parcel after repairs are made, and d) the cost of repairs required to bring the parcel into compliance.³³

For those parcels where the cost of needed repairs is less than 50% of the value of the property, the In Rem Review Board issues an order describing its findings, ordering the owner to make the required repairs or “clean and close” the property within a set period of time. If the owner(s) fail to make the repairs then the Code Enforcement Section is authorized to perform the cleaning and closing. Costs expended on the cleaning and closing are a lien against the property, but this Article III lien is not granted priority status by state law and is thus lower in priority than any other previously recorded lien on the property including mortgages.³⁴

For those properties where the cost of needed repairs exceeds 50% of the property value, the In Rem Review Board issues an order describing its findings, and setting a period of time for the owner(s) to demolish the parcel. If the owner fails to complete the required demolition then the Code Enforcement Section is authorized to perform the demolition. Costs expended on the demolition are a lien against the property, but this Article III lien is not granted priority status by state law and is thus lower in priority than any other previously recorded lien on the property including mortgages.³⁵

ARTICLE III IN REM REVIEW BOARD PROCESS



2. Observations on the Article III In Rem Review Board Process

Housing and building code enforcement through the Article III In Rem Review Board process is inefficient. Significant time and process is required to obtain a single In Rem Review Board demolition order, and in the vast majority of cases the Review Board process does not generate voluntary compliance by owners. Furthermore, the City of Atlanta has been unable to recoup any of the costs it expended on demolitions authorized by the In Rem Review Board in the last few years. In FY 2013, for example, the Code Enforcement Section completed 65 In Rem Review Board ordered demolitions at a cost of \$1,271,013.04.³⁶ Although it expended the funds to carry out each of those demolitions, none of the resulting low priority demolition liens have been satisfied.³⁷ Moreover, the City of Atlanta does not own a single one of these 65 demolished parcels and thus it has no ability to force a transfer of those parcels into responsible private or non-profit development hands, or to recoup any funds on the sale of the parcels.

Housing and building code enforcement through the Article III In Rem Review Board Administrative Process is ineffective. Despite the hours of public service offered by board members, In Rem Review Board hearings and orders have not generated significant compliance from property owners. Between 2011 and June of 2014, 461 demolitions were

ordered by the Board.³⁸ In that time period, only 14 demolitions were completed by property owners in response to an In Rem Review Board order.³⁹ Furthermore, because the Code Enforcement Section does not have sufficient demolition funds to meet the demand, 249 In Rem Review Board demolition orders were outstanding as of June 2014.⁴⁰

Housing and building code enforcement through the Article III In Rem Review Board is ineffectual in the face of inequity. The In Rem Review Board has no funds to support low-income or other vulnerable homeowners without the means to cure code violations who appear before the Board. Conversely, the clean/close or demolition activity performed by the City in response to a Review Board order and non-compliance from an owner simply confers a benefit on a private, negligent property-owner, and then provides the City no means to force a transfer of that property into public or responsible private hands.

The In Rem Review Board fails to satisfy any of the elements of an effective, efficient and equitable code enforcement system. It does not generate voluntary compliance, and it does not result in a recovery of the public funds expended on code enforcement. The low priority of the In Rem Review Board lien does not provide an effective means to force transfer of ownership, and the focus of both the Compliance Resolution Team and the In Rem Review Board is entirely on properties with unidentifiable or unresponsive owners, rather than on programs to assist vulnerable and willing owner-occupants with needed property remediation.

IN REM REVIEW BOARD RESULTS

JAN. 2011-JUNE 2014: DEMOLITIONS ORDERED BY IN REM REVIEW BOARD = 461
JAN. 2011-JUNE 2014: DEMOLITIONS COMPLETED BY OWNERS IN RESPONSE TO BOARD ORDER = 14
FY 2013: DEMOLITIONS COMPLETED BY CODE ENFORCEMENT SECTION= 65
FY 2013: PUBLIC FUNDS EXPENDED TO COMPLETE 65 DEMOLITIONS = \$1,271,013.04
FY 2013: PUBLIC COSTS RECOVERED THROUGH IN REM REVIEW BOARD PROCESS = \$MINIMAL
FY 2013: PARCELS DEMOLISHED OR CLEANED AND CLOSED BY CITY NOW OWNED BY CITY = 0

3. Recommendations Regarding In Rem Review Board

Our recommendation in the face of the lack of compliance generated by the In Rem Review Board process, the inability of the City to recover any funds expended in Review Board ordered demolitions or clean/close actions, and the inability to force a transfer of delinquent property utilizing the resulting low-priority In Rem Review Board liens is simple: Abandon the In Rem Review Board Process. Consider the following options:

- a. Amend the Housing Code to dissolve the In Rem Review Board and abandon the In Rem Review Board enforcement process.
- b. Shift the focus of the Compliance Resolution Team from locating non-responsive owners to supporting low-income and other vulnerable owner-occupants who need assistance to remediate code delinquent property, or to sell or donate such property.

- c. Upon non-compliance on re-inspection for all property maintenance (non-hazardous violations), focus enforcement efforts on administrative fines attached as liens to the property which must be paid upon sale or transfer of the property.
- d. Upon inspection and a finding of highly hazardous conditions at a property, immediately transfer the case to the Office of Solicitor for enforcement in accordance with Article V Judicial In Rem Code Enforcement procedures described below.

4. 123 Atlanta Street and Article III In Rem Review Board Process

Assume that neither the inspecting code enforcement officer nor the Compliance Resolution Team was able to locate any in-state or responsive owner(s) of the property at 123 Atlanta Street and thus serving an Article I criminal citation was impossible. The Code Enforcement Section therefore brought the case of 123 Atlanta Street before the In Rem Review Board, and the Board determined that the cost to rehabilitate 123 Atlanta Street far outweighed the value of the property after such repairs.

The Board issued findings directing the owner(s) to demolish the property and authorizing the Code Enforcement Section to complete demolition if the owner(s) failed to do so. Unfortunately, because the owners of 123 Atlanta Street were either impossible to locate or simply non-responsive, the 123 Atlanta Street owners did not take any action to demolish or abate 123 Atlanta Street. Because of the dangers presented by the illegal squatting and the fires at 123 Atlanta Street, the City prioritized 123 Atlanta Street on its list of over 250 pending demolition orders from the In Rem Review Board and spent approximately \$20,000.00 to tear down 123 Atlanta Street. The City placed a lien on the property for \$20,000 but that lien is junior to at least two existing mortgages on the property.



DEMOLITION OF 123 ATLANTA STREET

At this stage, more than a year has passed since the initial complaint on 123 Atlanta Street was called in to the Code Enforcement Section. After great public expense and significant process the property at 123 Atlanta Street—unlike countless other properties just like it waiting in line for demolition—has been torn down and some of the greatest harms it presents to the public have been ameliorated. The City taxpayer, who funds the Code

Enforcement Section, has expended a great deal of money on privately owned property to accomplish the demolition and essentially conferred a benefit (a newly cleaned property) to a negligent property owner. Not only is the City unable to recoup the funds expended, it is also unable to force a transfer of ownership to the local government or some other private and responsible party because the In Rem Review Board lien is lower in priority than other pre-existing liens. The same absent or negligent owner still holds title to the property—now a vacant lot. Are there any other options available to the City of Atlanta that might help code enforcement processes arrive at a more effective, efficient and equitable result?

D. Article V Judicial In Rem Code Enforcement: Fix it Up or Pay it Up

Unlike the Article I and Article III processes described above, Article V of the Atlanta Housing Code authorizes a powerful Judicial In Rem Code Enforcement process. Article V Judicial In Rem Code Enforcement will generate either voluntary compliance by an owner, or a “super-priority” lien in the amount of all code enforcement costs that is attached to the property itself, and that has the potential to be senior in priority to any other debt on the property except for taxes. That super-priority lien may be collected and enforced with delinquent taxes. The City of Atlanta utilized this Article V process on three properties in 2009, but never transferred the resulting liens to the tax commissioner for collection and enforcement.⁴¹ Those three 2009 Article V code liens alone amounted to over \$160,000.00 in public funds expended to remediate three properties. In recent weeks, the Office of the Solicitor filed two new Article V Judicial In Rem Code Enforcement actions in Municipal Court and is currently prosecuting these new actions.

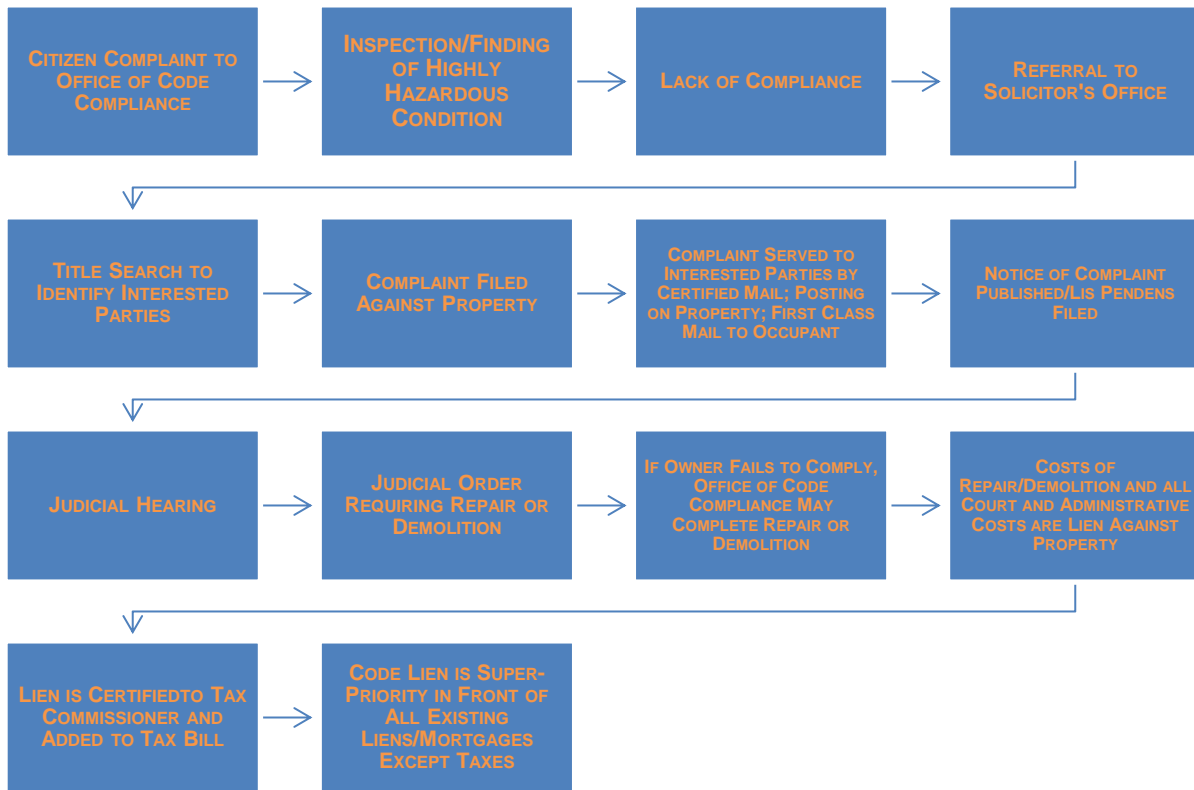
1. Article V Process

In 2008, the City of Atlanta adopted the Article V Judicial In Rem Code Enforcement ordinance (“Article V”), authorized by state law,⁴² that provides for a judicial proceeding against a problem parcel, rather than against an individual or corporate property owner. This Article V judicial proceeding is civil in nature, rather than criminal, and focused against the property itself. Thus notice of the action does not need to be served personally. Furthermore, any resulting code lien generated by the Article V process has the potential to be a “super-priority lien” against the property, junior only to property taxes, and the lien may be collected and enforced with delinquent taxes.⁴³ Other municipalities in Georgia utilize similar Judicial In Rem Code Enforcement powers effectively.⁴⁴

To institute the Article V proceedings, the Solicitor’s office may file a complaint against the problem parcel in Atlanta Municipal Court.⁴⁵ Service of the summons and complaint must be mailed by certified mail or statutory overnight delivery to all parties with an interest in the property, mailed first class mail to the property address to the attention of occupants, and also posted on the property.⁴⁶ Unlike in the Article I criminal code enforcement proceedings currently utilized by Atlanta Code Enforcement officials, personal service to property owners is not required in the Article V process. Notice of the complaint and hearing must be published in the appropriate county newspaper for two weeks prior to the hearing and a notice of lis pendens must be filed in the office of the clerk of superior court in the county where the parcel is located.⁴⁷

If the Court finds after notice and evidence presented at the Article V hearing that the structure is in violation of the Housing Code it will issue an order requiring the owner to either repair or demolish the structure (depending on the cost required for repair) within a specified time-frame.⁴⁸ If the owner fails to comply with the order, the Code Enforcement Section may proceed to repair or demolish the structure in accordance with the Court Order.⁴⁹ The costs of the repair or demolition including court costs, appraisal fees, and any administrative costs incurred will constitute a lien against the property and will be “superior to all other liens on the property, except liens for taxes” and may be collected using all available methods for enforcement of delinquent taxes.⁵⁰ The code enforcement lien will generate interest and penalties in the same amount and at the same rate as delinquent taxes.⁵¹

ARTICLE V JUDICIAL IN REM CODE ENFORCEMENT PROCESS



2. Observations on the Article V Judicial In Rem Code Enforcement Process

Consistently and properly utilized Article V Judicial In Rem Code Enforcement procedures present a powerful tool to inspire property owners to either **fix up** their property or **pay up** the costs expended by the public to remediate their property—in order to avoid giving it up through the delinquent tax enforcement process.

Article V Judicial In Rem Code Enforcement is effective. When owners fail to remediate or demolish a code delinquent property when ordered to do so, the Code Enforcement Section is then authorized to clean and close or demolish that property. The code lien that results from

the Article V process, a lien that includes all public costs expended on the property including remediation and court/administrative costs, is a super-priority lien against the property, second only to taxes. That code lien may then be collected and enforced through the delinquent tax enforcement process—resulting in either payment of all public costs expended, or a forced transfer in ownership to responsible public or private owners.

Article V Judicial In Rem Code Enforcement is efficient. Because no criminal penalties are available, personal service to property owners is not required and a less expensive, less burdensome service of process is sufficient. Where property owners fail to appear in Court to answer the complaint or are otherwise non-responsive, the Court may order immediate remediation or demolition of the property at issue. When the City incurs costs in the amelioration of code violations that are harming neighborhoods and neighbors, Article V Code Liens have the power to either inspire negligent owners to pay up the public costs incurred, or to force a transfer of the property out of irresponsible and negligent hands through a Judicial In Rem Tax Sale (described in more detail in section IV below).

Article V Judicial In Rem Code Enforcement is equitable. Unlike Article I and II enforcement proceedings, which typically result in the City fixing up property that remains in the hands of negligent private owners, Article V Judicial In Rem Code Enforcement has consequences for irresponsible property owners. Moreover, because Article V Judicial In Rem Code Enforcement is focused on enforcement against property and does not rely on criminal penalties, the resources of the Office of the Public Defender will not be implicated. Rather than facing criminal penalties, vulnerable owner-occupants without the means to cure code violations can be identified early in the Judicial In Rem Code Enforcement process and diverted to programs that may provide assistance with needed repairs.

Cost savings to the City and to the Code Enforcement Section realized by the use of Article V Judicial In Rem Code Enforcement will be reflected by the following 1) increased public safety and community satisfaction upon removal of vacant, abandoned, hazardous structures, 2) an increase in voluntary code compliance once the Judicial In Rem Code Enforcement process is utilized and non-compliant owners see that a super-priority lien will be placed against their property if they fail to comply, 3) public cost recovery where delinquent code liens are collected and enforced along with delinquent taxes, and 4) newly generated revenue once deteriorated parcels are transferred to new ownership and put back in productive use.

3. Recommendations Regarding Article V Code Enforcement

In accordance with our observations throughout this report, in the face of non-compliance on vacant, abandoned and hazardous structures, we recommend that the City of Atlanta shift its code enforcement efforts to the Article V Judicial In Rem enforcement process including the following steps:

- a. Commission a training seminar on Article V Judicial In Rem Code Enforcement for Office of the Solicitor, Municipal Court Judges, the Code Enforcement Section and the Office of the Fulton County Tax Commissioner. Consider hiring an attorney from

Griffin, GA or Valdosta, GA with experience prosecuting Judicial In Rem Code Enforcement cases to provide training seminar.

- b. Upon non-compliance after first inspection and notice of violation letter, or upon a finding of highly hazardous conditions, transfer code enforcement cases immediately from the Code Enforcement Section to the Office of the Solicitor for prosecution under Article V Judicial In Rem Code Enforcement.
- c. Upon court order of remediation or demolition, and lack of compliance by property owner(s), direct the Code Enforcement Section to complete remediation or demolition with available resources.
- d. Record and certify all costs incurred in code enforcement process to date, and in remediation or demolition of properties, as a super-priority Article V code lien against the property.
- e. Transfer Article V code liens to the Fulton County Tax Commissioner for collection and enforcement within 90 days of completion of the demolition or remediation reflected in the lien.

4. 123 Atlanta Street and Article V Judicial In Rem Code Enforcement

Prosecution of the property at 123 Atlanta Street utilizing the Judicial In Rem Code Enforcement process may result in several efficiencies. First, upon investigation and finding of hazardous conditions at the address that likely necessitate demolition, the Solicitor's Office may simply file a complaint against the property and serve the complaint to all interested parties revealed in a comprehensive title exam using registered mail, first class mail to the property and posting on the property. Because this "In Rem" process is focused on enforcement against property, rather than individuals, the expensive and resource heavy requirement of personal service in Article I judicial proceedings is eliminated entirely from the process.

At this point in the life of 123 Atlanta Street, the Code Enforcement Section has investigated the parcel, documented the myriad substandard and dangerous conditions, and the Solicitor's Office has filed a complaint against the parcel utilizing the Judicial In Rem Code Enforcement ordinance. After serving all interested parties, publishing the hearing and posting the property as required, a hearing was held and the Municipal Court judge ordered the owner(s) and interested parties to demolish the structure within a set period of time (perhaps 60 days). No owners or interested parties appeared at the hearing and no action was taken on the property in the 60-day time-frame allowed by the Court. The City of Atlanta then moved to demolish the structure at an average cost of \$20,000.00, and also appropriately cleaned and graded the now vacant lot at 123 Atlanta Street.



DEMOLISHED, CLEANED AND GRADED 123 ATLANTA STREET

An Article V code lien in the amount of approximately \$30,000.00 in costs (including costs of demolition activity, court costs and other administrative costs) was attached to the property and was added to the tax bill associated with 123 Atlanta Street. The tax bill was sent to the address on file with the tax commissioner and the bill has not been paid. What steps need to occur to force a transfer in ownership of this structure into responsible hands or to recover the public funds expended to date?

IV. DELINQUENT PROPERTY TAX ENFORCEMENT: PAY IT UP OR GIVE IT UP

Vacancy, abandonment and property tax delinquency often go hand in hand. Delinquent property tax enforcement is one key tool available in the local government toolbox to force a transfer to responsible hands of those tax delinquent vacant parcels that are causing the greatest harms in the community. This section describes the processes for delinquent property tax enforcement in the City of Atlanta, and the manner in which the use of Article V Judicial In Rem Code Enforcement, combined with a Judicial In Rem Tax Sale, is the optimum system for moving vacant, abandoned, code-deficient and hazardous property into productive, revenue-generating use.

In Atlanta, all real property is taxed.⁵² Currently, City taxes are collected and enforced by the Fulton County Tax Commissioner pursuant to a contract with the City. Property tax liens are superior to all other claims on the property—including mortgages.⁵³ The tax lien accrues interest and penalties and, if it is not paid the property may be sold to satisfy delinquent taxes. Georgia law authorizes two processes for the sale of property for delinquent taxes including 1) a non-judicial tax sale, and 2) a Judicial In Rem Tax Sale. Fulton County and City of Atlanta property taxes are currently enforced primarily utilizing the non-judicial tax sale method, though the Judicial In Rem Tax Sale method has been utilized successfully by the Fulton County Tax Commissioner in prior years.

A. Note on Non-Judicial Delinquent Tax Enforcement

In recent years in the wake of the widespread vacancy, abandonment and mortgage foreclosure in many distressed communities throughout the city, low-value, tax delinquent and code delinquent properties are left in limbo to simply deteriorate in the non-judicial tax sale process. Because of constitutional deficiencies in the notice required for non-judicial tax sales, the non-judicial tax sale process offers little possibility for transfer of marketable, insurable title of such property to responsible owners. Moreover, the sale of tax liens on low-value, vacant and abandoned properties to private investors results in the loss of any public leverage to force a transfer to responsible ownership.⁵⁴

B. Judicial In Rem Delinquent Tax Enforcement

1. Combination of Article V Code Liens with Judicial In Rem Tax Enforcement

The optimum process for either collecting code lien costs on vacant, abandoned sub-standard properties, or forcing a transfer of such property to responsible owners, is the utilization of Article V Judicial In Rem Code Enforcement in conjunction with the Judicial In Rem Tax Sale process. Code liens, established through Article V code enforcement proceedings described above, may be collected and enforced with delinquent property tax through the Judicial In Rem Tax Sale process, and the Judicial In Rem Tax Sale process transfers marketable, insurable title to tax sale purchasers.

All costs associated with remediation or demolition of a property prosecuted through the Article V Judicial In Rem Code Enforcement process, including all court and administrative costs borne by the Solicitor's Office are a lien against the property.⁵⁵ That lien must be transferred to the County Tax Commissioner for collection and enforcement, and may be enforced through the Judicial In Rem Tax Sale Process.⁵⁶ While typically a Judicial In Rem Tax Sale may not begin until a tax has been delinquent for at least 12 months, a County Tax Commissioner may proceed with a Judicial In Rem Tax Sale on a tax delinquent property that also bears Article V Code Liens immediately after the tax bill is due and unpaid.

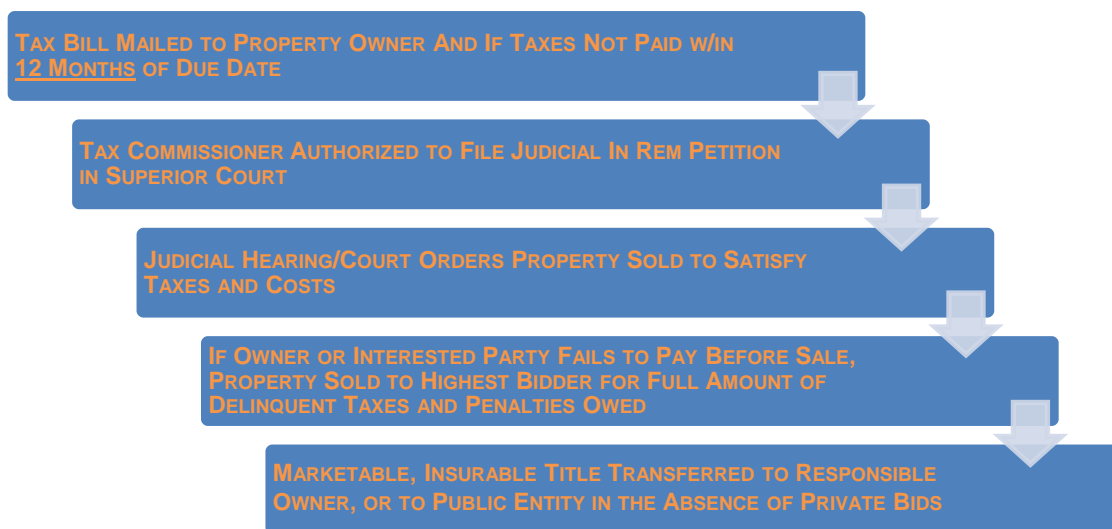
To utilize the Judicial In Rem Tax Sale process in the City of Atlanta, the Tax Commissioner must file a petition in the Fulton County Superior Court after the property taxes are due on a given parcel. The petition must include the following information: 1) the identity of the petitioner and the name and addresses of the individual responsible for collecting the delinquent taxes; 2) the property address; 3) a description of the property; 4) the tax identification number of the property; 5) the calendar year or years for which the taxes are delinquent; 6) the principal amount of the delinquent taxes together with the interest and penalties; and 7) the names and addresses of parties to whom copies of the petition are to be sent.⁵⁷ Copies of the petition must be mailed to all interested parties⁵⁸ whose addresses can be reasonably ascertained.⁵⁹ Notice of the filing of the petition must be published within thirty days of filing in the Fulton County Daily Report on two separate dates and must include the same information as the petition, excluding the names of the interested parties.⁶⁰

The lynchpin to the Judicial In Rem Tax Sale procedure is the judicial hearing on the petition, and the judgment that results from that hearing. The hearing must take place no sooner than 30 days after the petition is filed, and is an opportunity for any interested party to be heard and to contest the delinquency of the taxes and the adequacy of the proceedings. If the court finds that the information in the petition is accurate the court will issue an order that: 1) the taxes are delinquent; 2) proper notice has been given to all interested parties; 3) the property described in the petition may be sold; and 4) the sale shall become final after 60 days.⁶¹ The owner or any interested party can redeem the property, and stop the sale, at any point prior to the sale by paying the delinquent taxes and interest, penalties and costs to date.⁶²

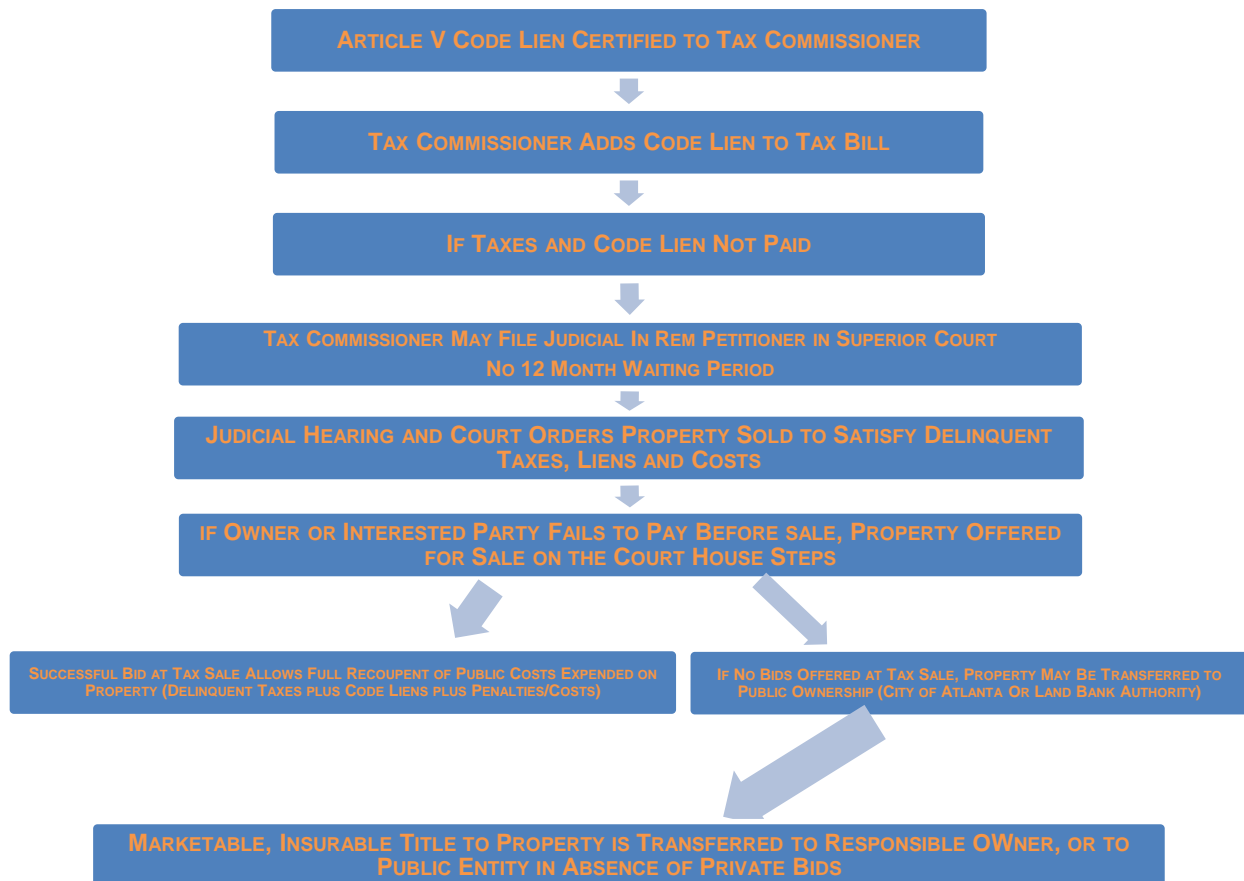
Unless the property is redeemed, the sale of the tax delinquent property is conducted no sooner than forty-five days following the issuing of the order of the superior court.⁶³ The property is sold free and clear of all liens, claims and encumbrances except for a 60 day right of redemption held by the record-owner, and any superior tax liens or easements.⁶⁴ The minimum bid for the property at the Judicial In Rem Tax Sale typically consists of the amount of the tax lien(s) outstanding on the property, including penalties and interest, plus any costs incurred by the governmental entity in collecting the tax.⁶⁵ Unpaid Article V Code Liens, which generate interest and penalties at the same rate as delinquent taxes,⁶⁶ may also be collected and enforced through this process.⁶⁷

If there is no bid at the tax sale for an amount higher than the minimum bid, the Fulton County/Atlanta Land Bank Authority may bid at the Judicial In Rem Tax Sale and obtain ownership of the property. The Land Bank Authority has the unique structure and expertise to effectively obtain, maintain and dispose of vacant, abandoned and substandard properties in accordance with public priorities.

JUDICIAL IN REM TAX SALE PROCESS (W/OUT ARTICLE V CODE LIENS)



JUDICIAL IN REM TAX SALE PROCESS (W/ ARTICLE V CODE LIENS)



2. Observations Regarding Judicial In Rem Code Enforcement Coupled With Judicial In Rem Tax Sale Procedures

Judicial In Rem Tax Sales coupled with Judicial In Rem Code Enforcement proceedings are efficient. The utilization of Article V Code Liens coupled with Judicial In Rem Tax Sale procedures reduces the typical stabilization time-line on tax delinquent properties. The presence of Article V Code Liens against a property authorizes the Tax Commissioner to proceed with Judicial In Rem Tax Sale enforcement, rather than waiting for 12 months of tax delinquent status which is required for properties with delinquent taxes and no Article V code liens. In addition, unlike deeds resulting from non-judicial tax sales, the deed of ownership that results from a Judicial In Rem Tax Sale is marketable and insurable. No additional court proceedings should be required for title to vest in the tax sale purchaser, or in the public entity that bids at the Judicial In Rem Tax Sale.

Judicial In Rem Tax Sales coupled with Judicial In Rem Code Enforcement proceedings are effective. The threat of the Judicial In Rem Tax Sale may generate payment of both delinquent taxes and unpaid Article V Code Liens from property owners who do not want to lose their property through the sale process. In that event, all public funds expended on a code delinquent property to remediate or demolish that property will be recovered by the City.

When property owners fail to pay Article V Code Liens, and those code liens are collected and enforced by the Tax Commissioner, then the Judicial In Rem Tax Sale will result in either 1) a sale of the property to the highest bidder for the amount of all delinquent taxes, Article V Code Liens, interest, penalties and costs, or 2) in the absence of bidders, a transfer of ownership of the problem property to a responsible public entity including the City or the Fulton/Atlanta Land Bank Authority.

Judicial In Rem Tax Sales coupled with Judicial In Rem Code Enforcement proceedings are equitable. The judicial nature of the proceedings offer ample opportunity for identification of low-income, elderly or other vulnerable owner-occupants early in the process to ensure payment plan or other supportive programs may be utilized. In addition, the Judicial In Rem Code Enforcement and Tax Sale procedures provide a means for forcing a transfer to responsible public or private hands those dangerous, highly-hazardous properties that are often causing significant harm to vulnerable neighbors—all while providing ample opportunity for property owners to fix up or pay up the property to avoid giving it up through the Judicial in Rem Tax Sale.

3. Recommendations Regarding Judicial In Rem Code Enforcement Coupled With Judicial In Rem Tax Sale Procedures

Assuming the City of Atlanta shifts its code enforcement efforts to the Article V Judicial In Rem Code Enforcement process described above, we recommend that any resulting Article V Code Liens be enforced utilizing the Judicial In Rem Tax Sale enforcement procedures, including the following steps:

- a. Certify all Article V Code Liens to the Fulton County Tax Commissioner's Office in accordance with Georgia law and the Atlanta Housing Code.
- b. Coordinate comprehensive title work required for Article V court proceedings and service with the Fulton County Tax Commissioner's Office to reduce cost and redundant title work in the Judicial In Rem Tax Sale process.
- c. Reserve funds to cover costs incurred by Tax Commissioner's Office in completing Judicial In Rem Tax Sale enforcement against properties in the event such costs are not recovered at resulting Judicial In Rem Tax Sale.
- d. Track all successful bids at Judicial In Rem Tax Sales that include Article V Code Liens and distribute bid amounts to public entities that incurred costs on the properties including, but not limited to, the Code Enforcement Section, the Office of the Solicitor, and the Fulton County Tax Commissioner.
- e. Ensure the Fulton/Atlanta Land Bank Authority is authorized and available to take title to properties offered for sale at Judicial In Rem Tax Sale that receive no private bids.

- f. Budget and reserve funds for the Fulton/Atlanta Land Bank Authority to properly maintain and dispose of any properties offered for sale at Judicial In Rem Tax Sales that receive no private bids.

4. 123 Atlanta Street and Judicial In Rem Code Enforcement Coupled With Judicial In Rem Tax Sale Procedures



How might our fictional property at 123 Atlanta Street fare in the face of Judicial In Rem Code Enforcement coupled with the Judicial In Rem Tax Sale process?

Let us assume that 123 Atlanta Street is tax delinquent, that approximately \$20,000 in back taxes is owed, that the parcel itself is worth no more than \$10,000 *before or after* demolition. The owner(s) are unable to be found, out-of-state or non-responsive. Let us also assume that, pursuant to Article V code enforcement proceedings, the Code Enforcement Section has completed the demolition of 123 Atlanta Street and the cost of that demolition has been filed as a lien against the property and added to the tax bill. In this scenario, the tax commissioner does not have to wait until twelve months from the tax bill deadline but may proceed upon tax delinquency to file a Judicial In Rem Tax Sale petition against the property and seek an order from the superior court ordering the sale of the property.

Assuming that no tax liens on 123 Atlanta Street are held by a private third party,⁶⁸ the tax commissioner may file a petition in superior court against the property at 123 Atlanta Street notifying all owners and interested parties in accordance with the statute. At the judicial hearing, unless an owner or interested party appears and pays the delinquent taxes (and penalties, interests and costs owed), the court will order that 1) delinquent taxes in the amount of \$20,000 are owed on 123 Atlanta Street, 2) all owners and interested parties were properly notified of the Judicial In Rem Tax Sale proceedings, 3) that the property at 123 Atlanta Street shall be sold, and 4) that the sale will become final subsequent to the 60 day post-sale redemption period available to the property owner.

If there are no private bidders at the ensuing Judicial In Rem Tax Sale, the Fulton County/Land Bank Authority may bid on the property and, after the 60 day post-sale right of redemption period, the Land Bank Authority will obtain the property. The deed resulting from a properly conducted Judicial In Rem Tax Sale will be insurable and marketable. At this point, the Land Bank Authority may proceed to put the property at 123 Atlanta Street into productive use—perhaps as a public park, or by selling the property to private or non-profit responsible developers.



Utilizing the Article V Judicial In Rem Code Enforcement process in concert with Judicial In Rem Tax Sale proceedings may cut the property stabilization timeline by at least a full year. In addition, by utilizing Article V Judicial In Rem Code Enforcement coupled with Judicial In Rem Tax Sale proceedings, the City can ensure that either 1) all code enforcement costs associated with 123 Atlanta Street are paid up, or 2) 123 Atlanta Street is transferred to a responsible public or private owner.

V. SUMMARY OF RECOMMENDATIONS

1. Recommendations on Code Requirements and Initial Inspection Process

- a. Amend Housing Code to issue fines against owners upon failure to comply and remediate property maintenance violations after first inspection, and enforce all fines as liens against the property pursuant to appropriate court processes.
- b. Amend Housing Code to ensure that fully loaded costs associated with inspection and early code enforcement activities are adequately reflected in the cost of any initial fines issued against code delinquent properties.
- c. Amend Housing Code to clarify that fines issued in response to a first inspection that identifies code violations are civil in nature and do not implicate any criminal penalties.
- d. Amend Housing Code to ensure fines assessed for code violations may be attached as lien to the property and collected upon sale or transfer of property.
- e. Institute proactive, non-complaint driven, area-wide inspections in targeted neighborhoods. Consider beginning this proactive program in strong-market communities with high rates of owner-occupancy most likely to generate voluntary compliance in response to a simple inspection and notice of violation letter.
- f. Separately track code violations and compliance rates on various categories of properties including: 1) vacant structures, 2) occupied multi-family structures, 3) renter-occupied single family structures, and 4) owner-occupied properties. Identify vulnerable owner-occupants of code delinquent properties without the means to complete necessary remediation and immediately refer such owners to the Compliance Resolution Team (described below), the Atlanta Office of Housing or other City departments who may provide grant and other assistance to such owners to complete repairs.
- g. Utilize fees generated from proactive inspection program to support code enforcement activities throughout the City and to support code remediation assistance for low-income, senior-citizen and other vulnerable owner occupants.

2. Recommendations Regarding Article I Criminal Code Enforcement

- a. Abandon criminal citation procedure currently anticipated by Article I, and accompanying requirement of personal service of criminal citation.
- b. Issue fines against code delinquent properties that reflect fully loaded costs of code enforcement efforts to date. Ensure fines escalate over time with non-payment. Notify owners of the violation, duty to remediate, and accompanying fines by first class mail.

- c. Amend Housing Code to provide that in the face of non-compliance on non-highly hazardous violations, fines assessed are automatically filed as a lien on the property that must be satisfied upon sale or transfer of the property.
- d. In response to highly hazardous conditions revealed upon initial inspection conduct reasonable research of public records to locate the identity of probable owners and send notice of violations, with brief opportunity to cure, to owners by first class mail.
- e. In the face of non-compliance on highly hazardous structures, transfer code enforcement case to Office of Solicitor for immediate prosecution in accordance with Article V In Rem Code Enforcement process discussed below.

3. Recommendations Regarding Article III In Rem Review Board

- a. Amend the Housing Code to dissolve the In Rem Review Board and abandon the In Rem Review Board enforcement process.
- b. Shift the focus of the Compliance Resolution Team from locating non-responsive owners to supporting low-income and other vulnerable owner-occupants who need assistance to remediate code delinquent property, or to sell or donate such property.
- c. Upon non-compliance on re-inspection for all property maintenance (non-hazardous violations), focus enforcement efforts on administrative fines attached as liens to the property which must be paid upon sale or transfer of the property.
- d. Upon inspection and a finding of highly hazardous conditions at a property, immediately transfer the case to the Office of Solicitor for enforcement in accordance with Article V Judicial In Rem Code Enforcement procedures described below.

4. Recommendations Regarding Article V Code Enforcement

- a. Commission a training seminar on Article V Judicial In Rem Code Enforcement for Office of the Solicitor, Municipal Court Judges, the Code Enforcement Section and the Office of the Fulton County Tax Commissioner. Consider hiring an attorney from Griffin, GA or Valdosta, GA with experience prosecuting Judicial In Rem Code Enforcement cases to provide training seminar.
- b. Upon non-compliance after first inspection and notice of violation letter, or upon a finding of highly hazardous conditions, transfer code enforcement cases immediately from the Code Enforcement Section to the Office of the Solicitor for prosecution under Article V Judicial In Rem Code Enforcement.
- c. Upon court order of remediation or demolition, and lack of compliance by property owner(s), direct the Code Enforcement Section to complete remediation or demolition with available resources.

- d. Record and certify all costs incurred in code enforcement process to date, and in remediation or demolition of properties, as a super-priority Article V code lien against the properties.
- e. Transfer Article V Code Liens to the Fulton County Tax Commissioner for collection and enforcement within 90 days of completion of the demolition or remediation reflected in the lien.

5. Recommendations Regarding Judicial In Rem Code Enforcement Coupled With Judicial In Rem Tax Sales

- a. Certify all Article V Code Liens to the Fulton County Tax Commissioner's Office in accordance with Georgia law and the Atlanta Housing Code.
- b. Coordinate comprehensive title work required for Article V court proceedings and service with the Fulton County Tax Commissioner's Office to reduce cost and redundant title work in the Judicial In Rem Tax Sale process.
- c. Reserve funds to cover costs incurred by Tax Commissioner's Office in completing Judicial In Rem Tax Sale enforcement against properties in the event such costs are not recovered at resulting Judicial In Rem Tax Sale.
- d. Track all successful bids at Judicial In Rem Tax Sales that include Article V Code Liens and distribute bid amounts to public entities that incurred costs on the properties including, but not limited to, the Code Enforcement Section, the Office of the Solicitor, and the Fulton County Tax Commissioner.
- e. Ensure the Fulton/Atlanta Land Bank Authority is authorized and available to take title to properties offered for sale at Judicial In Rem Tax Sale that receive no private bids.
- f. Budget and reserve funds for the Fulton/Atlanta Land Bank Authority to properly maintain and dispose of any properties offered for sale at Judicial In Rem Tax Sales that receive no private bids.

VI. CONCLUSION

The difficulties and costs presented by vacant, abandoned, tax and code delinquent properties are complex and significant. There may not be a silver bullet legal or policy tool to address these parcels, nor sufficient public funds to satisfy the estimated \$40 million in needed repair and demolition dollars. But the City of Atlanta does have tools *currently at its disposal* to begin to address vacant, abandoned property in a more effective, efficient and equitable fashion.

The use of Article V Judicial In Rem Code Enforcement, focused on the placement of super-priority liens on problem parcels, will maximize the likelihood of either recovery of public funds invested, or a forced transfer in ownership of the most destructive parcels. The abandonment of Article I criminal sanctions will eliminate costly and ineffective personal service requirements from the code enforcement process, freeing up staff time and resources to perform remediation. The dissolution of the Article III In Rem Review Board process will eliminate a time-consuming and ineffective step in the code enforcement process. Focusing code enforcement efforts on civil penalties, fines and liens against the delinquent property itself, will preserve public defender resources and help ensure that low-income and other vulnerable property owners are diverted to programs that help them achieve compliance or transfer problem properties to responsible ownership without facing severe criminal penalties. Most importantly, abandonment of criminal sanctions for code violations, in favor of Article V and Judicial In Rem Tax Sale proceedings focused against the properties themselves, will help ensure that owners of vacant, abandoned and hazardous properties will either fix up, pay up, or give up problem properties.

The utilization of Judicial In Rem Code Enforcement coupled with Judicial In Rem Tax Sales will build on the powerful work of the Atlanta Vacant, Abandoned Property Working Group and the recently established Atlanta Code Enforcement Commission. Utilization of the Judicial In Rem tools in concert with one another will institutionalize a coordinated, effective, efficient and equitable systemic response to vacancy, abandonment and code violations in the City of Atlanta.

We hope that the observations and recommendations contained in this memorandum provide a helpful basis for further discussions and analysis among stakeholders throughout Atlanta. In all instances the decisions regarding whether these the options should be pursued to the implementation stage are left to the key policy leaders in the City of Atlanta.

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- ¹ SCI Report at 6 (<http://ditweb.atlantaga.gov/sci/sci7.pdf>).
- ² SCI Report at 6 (<http://ditweb.atlantaga.gov/sci/sci7.pdf>).
- ³ <http://clatl.com/freshloaf/archives/2014/08/20/how-should-atlanta-tackle-blight-in-neighborhoods>.
- ⁴ http://www.mortgagenewsdaily.com/12082011_vacancies_and_homeownership.asp.
- ⁵ Source: Stephen Whitaker and Thomas J. Fitzpatrick IV, *The Impact of Vacant, Tax-Delinquent and Foreclosed Property on Sales Prices of Neighboring Homes*, Federal Reserve Bank of Cleveland (Oct. 2011).
- ⁶ Vacant Land Management in Philadelphia: The Costs of the Current System and the Benefits of Reform at 7. (<http://www.econsult.com/projectreports/VacantLandFullReportForWeb.pdf>).
- ⁷ A full examination and description of the programs and policies available to assist vulnerable owner-occupants with repair of their homes is beyond the scope of this report. Such programs, including public programs at the Office of Housing and the Office of Planning and Community Development, use of Community Development Block Grant funds, programs run by InvestAtlanta and by non-profit community partners are absolutely critical to the success and efficacy of any code enforcement system.
- ⁸ See Atlanta Housing Code Art. I, § 19.
- ⁹ Atlanta Housing Code Art. II, § 27.
- ¹⁰ See e.g., Atlanta Housing Code Art. II, § 29.
- ¹¹ Atlanta Housing Code Art. II, § 27.
- ¹² See e.g., Atlanta Housing Code Art. II, § 29.
- ¹³ Interior code violations may be held in abeyance for vacant structures. Atlanta Housing Code Art. I, § 5(c) (“When a dwelling is vacant, the full application of this Code shall be held in abeyance for a period not to exceed six months provided that the exterior of such dwelling complies with the applicable provisions of this Code; the interior has been cleaned of trash, rubbish, and debris; and the dwelling has been made inaccessible by boarding and maintained in accordance with Section 29.”).
- ¹⁴ Atlanta Housing Code Art. II, §§ 27 & 29.
- ¹⁵ Atlanta Housing Code Art. I, § 7.
- ¹⁶ The Code Enforcement Section webpage is available here: <http://www.atlantaga.gov/index.aspx?page=328>.
- ¹⁷ Atlanta Housing Code Art. I, § 17. The reorganization of code enforcement from the Department of Planning and Community Development to the Atlanta Police Department was approved unanimously by City Council through City Ordinance 11-O-1655 in December of 2011.
- ¹⁸ 6/24/14 interview with code enforcement staff.
- ¹⁹ 6/24/14 interview with code enforcement staff.
- ²⁰ Atlanta Housing Code Art. I, § 8(b).
- ²¹ Atlanta Housing Code Art. I, § 8(b)(2).
- ²² 6/24/14 interview with code enforcement staff.
- ²³ 6/24/14 interview with code enforcement staff.
- ²⁴ Atlanta Housing Code Art. I, § 18.
- ²⁵ Atlanta Housing Code Art. I, § 18.
- ²⁶ Atlanta Housing Code Art. I, § 18.
- ²⁷ Noted in 6/24/14 interview with code enforcement office.
- ²⁸ 6/24/14 interview with code enforcement staff.
- ²⁹ Atlanta Housing Code Art. I, § 18(d).
- ³⁰ 6/24/14 interview with code enforcement staff.
- ³¹ 11/7/14 interview with code enforcement staff.
- ³² Atlanta Housing Code Art. III, § 33.
- ³³ Atlanta Housing Code Art. III, § 33 (a).
- ³⁴ Atlanta Housing Code Art. III, § 33 (b)(2).
- ³⁵ Atlanta Housing Code Art. III, § 33 (b)(3).
- ³⁶ 11/7/14 interview with code enforcement staff.
- ³⁷ 11/7/14 interview with code enforcement staff.
- ³⁸ 11/7/14 interview with code enforcement staff.
- ³⁹ 11/7/14 interview with code enforcement staff.
- ⁴⁰ 11/7/14 interview with code enforcement staff.

⁴¹ The three 2009 Article V code liens that were established but never transferred to the tax commissioner reflect over \$160,000 in code enforcement expenditures: 1) 1666 S. Gordon, \$5717.50, 2) 304 Lincoln St. SW, \$3228.63, 3) 176 Anderson Ave. NW, \$155,879.40.

⁴² See O.C.G.A. § 41-2-9.

⁴³ Atlanta Housing Code Art. V, § 56.

⁴⁴ See e.g., Valdosta, GA demolition lien ordinance at <http://www.valdostacity.com/index.aspx?page=568>.

⁴⁵ Atlanta Housing Code Art. V, § 54.

⁴⁶ Atlanta Housing Code Art. V, § 54 (c).

⁴⁷ Atlanta Housing Code Art. V, § 54 (c).

⁴⁸ Atlanta Housing Code Art. V, § 54 (d).

⁴⁹ Atlanta Housing Code Art. V, § 55.

⁵⁰ Atlanta Housing Code Art. V, § 56.

⁵¹ Atlanta Housing Code Art. V, § 55.

⁵² O.C.G.A. § 48-5-3.

⁵³ O.C.G.A. § 48-2-56(b).

⁵⁴ The sale of tax liens can pose substantial roadblocks to neighborhood stabilization when liens to low value, vacant, abandoned and sub-standard properties are sold to private third parties. Because of the low and even negative value of such properties, the tax liens are unlikely to ever be satisfied by owners or interested parties. Once the tax debt has been sold to a private third party, however, then the local government no longer retains any leverage to force a transfer in ownership of that parcel through a sale. For more information on the difficulties of achieving neighborhood stabilization where tax liens associated with vacant and abandoned properties are sold to third parties, see the analysis of the sale of tax liens in Rochester, NY prepared by the *Center for Community Progress* and available here: <http://www.communityprogress.net/analysis-of-bulk-tax-lien-sale--city-of-rochester-pages-401.php>.

⁵⁵ Atlanta Housing Code Art. V, § 56(a).

⁵⁶ Atlanta Housing Code Art. V, § 56(f).

⁵⁷ O.C.G.A. § 48-4-78(f).

⁵⁸ O.C.G.A. § 48-4--77.

⁵⁹ O.C.G.A. § 48-4-78(d).

⁶⁰ O.C.G.A. § 48-4-78.

⁶¹ O.C.G.A. § 48-4-79.

⁶² O.C.G.A. § 48-4-80(a)

⁶³ O.C.G.A. § 48-4-81(a).

⁶⁴ O.C.G.A. § 48-4-79.

⁶⁵ O.C.G.A. § 48-4-77(2).

⁶⁶ O.C.G.A. § 41-2-9-(b)(3); Atlanta Housing Code Art. V, § 56(f).

⁶⁷ O.C.G.A. § 41-2-9-(b)(2).

⁶⁸ The sale of tax liens can pose substantial roadblocks to neighborhood stabilization when liens to low value, vacant, abandoned and sub-standard properties are sold to private third parties. Because of the low and even negative value of such properties, the tax liens are unlikely to ever be satisfied by owners or interested parties. Once the tax debt has been sold to a private third party, however, then the local government no longer retains any leverage to force a transfer in ownership of that parcel. For more information on the difficulties of achieving neighborhood stabilization where tax liens associated with vacant and abandoned properties are sold to third parties, see the analysis of the sale of tax liens in Rochester, NY prepared by the *Center for Community Progress* and available here: <http://www.communityprogress.net/analysis-of-bulk-tax-lien-sale--city-of-rochester-pages-401.php>.

APPENDICES: KEY DOCUMENTS

A. ARTICLE I ATLANTA HOUSING CODE (CODE ENFORCEMENT WITH CRIMINAL PROCESS).....II

B. ARTICLE II ATLANTA HOUSING CODE (REQUIREMENTS FOR VACANT PROPERTIES).....XV

C. ARTICLE III ATLANTA HOUSING CODE (IN REM REVIEW BOARD).....XXVI

D. ARTICLE V ATLANTA HOUSING CODE (JUDICIAL IN REM CODE ENFORCEMENT).....XXXII

E. OCGA § 41-2-9 (SUPER-PRIORITY CODE LIEN STATUTE).....XXXIX

F. OCGA § 48-4-75 ET SEQ. (JUDICIAL IN REM TAX SALE STATUTE).....XLIII

APPENDIX A

ATLANTA HOUSING CODE ARTICLE I

(CODE ENFORCEMENT/CRIMINAL PROCESS)

Sec. 1. - Short Title.

The provisions embraced within the following sections shall constitute, and be cited as, "The Atlanta Housing Code," and will be referred to herein as the "Code."

Sec. 2. - Declaration of Policy.

A principal goal of the City of Atlanta is to create and preserve a safe, healthy, attractive and economically sound urban environment which will retain its current residents and attract other people. Residential communities that contain the homes of city dwellers and thus serve as the center of their activities, constitute a major and important portion of such an environment. As a result, the City recognizes that the continued development of its total environment is closely related to the creation, development, and preservation of safe, healthy, pleasant and economically sound residential communities. In support of such goals, the City is committed to policies and objectives which serve to develop, preserve and maintain: decent, safe and sanitary housing; property values and environmental conditions.

It is recognized that within the City, there currently exist dwellings and other buildings which are: unfit for human habitation or other uses; substandard, deteriorating, and/or in danger of causing or contributing to the general decline or deterioration in appearance or property value of the surrounding neighborhood; or adverse to the health, safety and general welfare of the occupants and general public thereof.

It is also recognized that there are buildings and other structures and parts of compartmentalized buildings and structures in the City, of all zoning classifications, which are vacant. By reason of their continued vacancy, these buildings and other structures are subjected to unauthorized entry which creates a condition whereby such buildings and other structures are subject to vandalism. It is further recognized that when such buildings and other structures are subject to an unauthorized entry, they become a breeding ground for criminal activity, such as, but not limited to, imtemperate use of alcoholic beverages and use of drugs, thus leading to incidences of destruction of such buildings and other structures by fire and also creating health and sanitation hazards. Additionally, it is found that other criminal activity, such as, but not limited to murder and rape, are likewise carried on in such buildings and other structures. Such unauthorized entry allows various classes of criminal conduct to be carried on in such clandestine surroundings.

It is acknowledged that such conditions involving residential property within the City not only threaten or endanger the health, safety or general welfare of the occupants thereof, and of the general public; but also contribute to the decline of community spirit and the physical appearance and property values of the neighborhood. Accordingly, the policy of this Code is to establish minimum standards for the maintenance of decent housing; to provide effective means for enforcement of such standards; and to encourage the rehabilitation and reuse of existing structurally sound buildings, while preserving, protecting and promoting the health, safety and welfare of occupants. It is further the policy of this Code to establish standards and procedures for the prevention and immediate correction of unsafe or unhealthy conditions for the protection of the neighborhood residents and of the general public.

Consistent with the Code's policy and intent to balance the necessity of protecting the public health, safety and general welfare against the undesirability of imposing particular requirements upon owner-occupants who choose to expose themselves to certain substandard conditions, the Code's basic health and safety requirements as set forth in Section 19 and 27. Code Sections 19 through 26 shall be mandatory for all other structures designed or intended for residential purposes whether occupied or vacant.

Sec. 3. - Purpose.

The purpose of this Code is to provide for the maintenance of the minimum requirements necessary for the protection of life, limb, health, property, safety and welfare of the general public and the owners and occupants of residential property in the City of Atlanta.

Sec. 4. - Authority.

This Code is adopted under the authority of Article I, Section II, Paragraph IV; Article IX, Section II, Paragraph II; and Article IX, Section II, Paragraph III of the Constitution of Georgia of 1983. Further authority is found in the Urban Redevelopment Law (O.C.G.A. 36-61-11); O.C.G.A. 36-34-2; O.C.G.A. 41-1-1 through 41-2-17; O.C.G.A. 44-7-4 and both Section 8-114(i) and Powers 16, 22, 25, 30, 31, 33, 34, 39, 46, 47, 55, 56, and 57 enumerated in Appendix I of the Charter of the City of Atlanta, Georgia.

Sec. 5. - Scope and Application.

- (a) *Occupied and vacant dwelling space.* Every building, in whole or in part, containing or designed to contain dwelling units whether vacant or occupied, shall conform to Sections 19 through 29 of this Code, irrespective of the primary use of such building and the date such building may have been constructed, altered, or repaired. Such property, whether privately owned or publicly owned, by the Atlanta Housing Authority or any other public entity, and whether receiving any type of governmental financial assistance, shall be subject to and conform with the applicable requirements of this Code unless otherwise provided by law.
- (b) *Buildings with Special Uses.* Every building used or intended for use as a Rooming House, Boarding House, Dormitory, Emergency Shelter, Group House, Residential Care Facility or like Facility, shall conform to Sections 19 through 25 and Section 26 of this Code irrespective of the primary use of such building and the date such building may have been constructed, altered or repaired. Such property, whether privately owned or publicly owned, by the Atlanta Housing Authority or any other public entity, and whether receiving any type of governmental financial assistance, shall be subject to and conform with the applicable requirements of this Code unless otherwise provided by law.
- (c) *Abatement of Interior Violations.* When a dwelling is vacant, the full application of this Code shall be held in abeyance for a period not to exceed six months provided that the exterior of such dwelling complies with the applicable provisions of this Code; the interior has been cleaned of trash, rubbish, and debris; and the dwelling has been made inaccessible by boarding and maintained in accordance with Section 29
- (d) *Vacant Lots.* Vacant lots shall conform to the applicable provisions of section 19 through 26 of this Code.
- (e) *Application of other Ordinances.* Any alterations to buildings, or changes of uses therein which may be caused directly or indirectly by the enforcement of this Code shall be done in accordance with all applicable codes including but not limited to: The City of Atlanta Building Code, the City of Atlanta Electrical Code, the City of Atlanta Elevator Code, the City of Atlanta Gas Code, the City of Atlanta HVAC Code, the City of Atlanta Plumbing Code, the City of Atlanta Fire Prevention Code, the Georgia Energy Code for Buildings and the Georgia State Code for Handicapped Accessibility.

Nothing in this Code shall be construed to cancel, modify or set aside any provision of the Zoning Ordinance of the City of Atlanta.

(f) *All new work to Conform.*

- (1) No building or structure shall hereafter be constructed, repaired or altered, nor shall the equipment for the operation of a building, structure, premises be constructed, installed, altered, repaired or removed, except in conformity with the provisions of this Code, unless specifically exempted therefrom;
- (2) No building or structure shall be altered in any manner which would be in violation of the provisions of this Code or of any authorized rule promulgated by the Director of the Bureau of Buildings made and issued thereunder, unless specifically exempted therefrom;
- (3) Nothing in this Code shall prohibit the raising or lowering of a building to meet a change of grade in the street on which it is located, provided that the building is not otherwise altered;
- (4) Whenever, in the opinion of the Director the full implementation of this Code would work an undue hardship in a specific case, the Director may waive the requirements in question provided that some equivalent means of achieving substantially the same degree of safety is assured. Said waiver shall be in writing and shall state the equivalent methods by which safety shall be assured.

Sec. 6. - Definitions.

Words in this Code used in the present tense include the future tense; the singular includes the plural; and the plural includes the singular. Whenever the words "building", "dwelling", "dwelling unit", "premises", "rooming house" "rooming unit", "boarding house", or "boarding unit" are used in this Code, they shall be construed as though they were followed by the words "or any part thereof."

The following terms used or referred to in this Code shall have the respective meanings:

APPLICABLE PROVISIONS OF THIS CODE shall mean:

Sections 19 through 29 of this Code for a building used or intended for use as a dwelling, vacant dwellings or a building with special uses. Whenever the applicable standard for a building, with special uses set forth in Section 26 conflicts with any standard contained in Sections 20 through 25, the standard specified in Section 26 shall apply.

Abandoned vehicle shall mean any vehicle left unattended in the same location for 30 days or more.

Basement shall mean that portion of a building having less than one half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

Boarded Dwelling shall mean a dwelling which has been made inaccessible by boarding as prescribed in Section 29 of this Code.

Boarding House shall mean any dwelling consisting of one or more rooming units, in which the owner or operator rents space to five to fifteen persons with one or more meals regularly served either as part of the rental or for a separate charge.

Building shall mean an edifice of any kind composed of parts joined together in some form, including, but not limited to garages, sheds, fences, accessory structures and appurtenances.

Building with Special Uses shall mean a rooming house, boarding house, dormitory, emergency shelter, group house, residential care facility or like facility.

Cellar shall mean that portion of a building having more than one-half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

City shall mean the City of Atlanta, Georgia.

Complaint shall mean any expression of concern, protest or dissatisfaction to the Director relating to the implementation or enforcement of this Code which reasonably specifies the suspected violations of this Code and which identifies the complaining party and the specific location of the dwelling suspected to be in violation of this Code.

Complex shall mean three or more buildings sharing common areas and having unified ownership or management.

Conviction shall mean a judgement by the Court, finding a defendant guilty as charged on a particular date, concerning a particular property, of violating either a single or multiple provisions of this Code or any previously enacted City of Atlanta Housing Code.

Court shall mean the Municipal Court of Atlanta or other Court of competent jurisdiction.

Director shall mean the director of the bureau of code compliance or his authorized representative. Hereinafter, any reference to the director of the bureau of buildings in this chapter shall mean the director of the bureau of code compliance.

Dormitory shall mean a dwelling used for institutional living and sleeping purposes by ten (10) or more persons.

Dwelling shall mean any building, along with its appurtenances, used or intended to be used, wholly or in part, for human habitation or for the inhabitants use.

Dwelling Unit shall mean any portion of a building used, intended or designed as a separate abode and used, intended or designed for living, sleeping, cooking and eating therein.

Extermination shall mean the control or eradication of infestation by removing or making inaccessible materials that may serve as food, breeding places or harboring places for pests, vermin or rodents and shall include pest control by poisoning, spraying, trapping, fumigating or any other recognized, legal and effective pest eradication procedure.

Family shall mean persons related by blood, marriage or operation of law.

Garbage shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Grade shall mean the average elevation of the ground adjoining a building.

Habitable Room shall mean an enclosed floor space arranged, used or intended to be used for any combination of living, sleeping or eating purposes. Space devoted exclusively for a bathroom, water closet compartment, kitchen, laundry, pantry, foyer, hallway, closet or storage space shall not in and of itself be considered a habitable room.

Infestation shall mean the presence within or around a dwelling of pests, vermin or rodents in such numbers or with such frequency as may be substantially detrimental to the health, safety or general welfare of the occupants and of the general public thereof.

Junked vehicle shall mean any automobile, truck, van, recreational vehicle, mobile home or trailer of any kind (or parts thereof) not within a completely enclosed structure which has been discarded, dismantled, junked, ruined, scrapped, wrecked in part or whole, abandoned, or which is inoperable or which cannot be legally operated on the public roads or which does not bear a current registration or a current license plate or a current state required inspection sticker.

Nuisance shall mean any condition, act or occurrence that results in annoyance, harm, inconvenience or damage to another; and the fact that the act or occurrence may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary reasonable person.

Occupant shall mean any person over one (1) year of age living in, using or having possession of a dwelling, except that a temporary guest shall not be considered an occupant.

Operator shall mean the person or persons, if any, with whom the owner has an agreement to manage, lease, rent, control, maintain or care for rental property, vacant property or a building with special uses.

Owner shall mean any person or persons having any individual, joint or common title or interest in real property defined by the laws of the State of Georgia as a legal or equitable estate or interest.

Owner-Occupied Dwelling shall mean any dwelling occupied in the entirety by its owner and/or the family of the owner.

Party in Interest shall mean a person in possession of property or having title or interest in property as defined by the laws of the State of Georgia as a legal or equitable estate or interest in property, and shall include, but not be limited to an executor, administrator, guardian or trustee.

Person shall mean an individual, partnership, joint venture, association, corporation or any other legal entity recognized by the laws of the State of Georgia.

Plumbing shall mean all of the following supplied facilities and equipment: gas pipes, water pipes, garbage disposal units, waste pipes, water closets, hot water heaters, sinks, lavatories, bathtubs, shower baths, catch basins, drains, vents, and other similar supplied fixtures, together with all connections to water, sewer or gas lines.

Premises shall mean a lot, plot or parcel of land, including dwellings, buildings, or structures thereon.

Property shall mean buildings, dwellings, land and whatever is erected or growing upon or affixed thereto.

Rental Dwelling Unit shall mean a dwelling unit for which periodic payments or other consideration is received in exchange for use and possession thereof.

Rooming House shall mean any dwelling space consisting of one or more rooming units in which the owner or operator rents space to five through fifteen persons.

Rooming Unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living or sleeping but not for cooking purposes.

Rubbish, Litter and Debris shall mean combustible and noncombustible waste materials except garbage. Such shall include, but not be limited to: paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral material, glass, crockery and the residue from the burning of wood, coal, coke and other combustible material.

Secured Dwelling shall mean a vacant dwelling to which unforced entry by persons cannot be readily made through the said dwelling's doors, windows or other openings of sufficient size to facilitate entry by persons.

Substandard Dwelling shall mean a dwelling in which any condition exists that is set forth in Section 19 or that does not meet the applicable requirements set out in Article II herein.

Substantial Compliance shall mean the existence in the subject building or dwelling unit of no more than three (3) violations of this Code, none of which constitutes a violation of Section 19.

Supplied shall mean contracted for, furnished by, installed by or under the control of the owner or operator of property.

Surface, all-weather shall mean any surface treatment, including gravel, which is applied to and maintained so as to prevent erosion, and to prevent vehicle wheels from making direct contact with soil, sod or mud and which effectively prevents the depositing of soil, sod or mud onto streets from areas required to be treated.

Unfit for Human Habitation shall mean the existence on property of any condition that is set forth in Section 19 of this Code.

Utility Services shall mean water, gas, electric and sewer services.

Vacant shall mean unoccupied.

Vacant lot shall mean a parcel of land devoid of an edifice of any kind.

Vegetative growth shall mean any and all uncultivated growth exceeding a height of 18 inches, as measured vertically from the surface of the ground, of any lot, tract or parcel of land.

Weed shall mean all rank, vegetative growth, including kudzu, poison ivy, plants of obnoxious odors, weeds, and grasses causing hay fever or those which serve as a breeding place for mosquitoes and other unhealthy or undesirable insects or as a refuge for snakes, rats or other rodents or as a hiding place for filth, litter, trash or that create a fire or traffic hazard or provide a hiding for persons.

Workmanlike Maintenance and Repair shall mean maintenance and repair made in a reasonable skillful manner and ordinarily performed, under similar conditions and like circumstances, by persons in that trade or profession.

Sec. 7. - Enforcement.

- (a) *Authority.* The primary authority and responsibility for the enforcement of the provisions of this Code shall be vested in the Director of the Bureau Code Compliance of the City of Atlanta or the successor of such Bureau. The Director of the Bureau of Buildings shall assist the Director of the Bureau of Code Compliance upon the latter's request.
- (b) *Powers and Duties of the Director.* The Director shall have the power and duty to perform the following functions:
 - (1) To investigate and determine whether dwellings and buildings in the City are in violation of any of the requirements of this Code and to determine if dwelling units are unfit for human habitation or other use;
 - (2) To enter upon property for the purposes of making inspections, provided, however, that such entry shall be made as provided hereinafter in Section 8;
 - (3) To investigate and determine whether certain provisions of this Code shall be enforced against the owner, operator, occupant or any combination thereof;
 - (4) To appoint and fix the duties of such officers, agents and employees as the Director deems necessary to carry out the purposes of this Code;
 - (5) To delegate any of the Director's functions and powers under this Code to such officers and agents as may be deemed necessary;
 - (6) To administer oaths, affirmations, examine witnesses and receive evidence;

- (7) To accept complaints as provided for in this Code and, unless otherwise provided for in this Code, to determine when valid circumstances exist for such complaints to be oral rather than written, provided that any oral complaint shall be recorded by the Director in a timely manner;
 - (8) To perform any other duty specified by this Code.
- (c) *Assistance of County Authorities.* In the performance of the aforementioned duties, the Director shall be authorized at any time to seek from the legally designated health authorities of Fulton and DeKalb Counties such assistance and cooperation as those authorities may be able to give in the areas of the City within their respective jurisdictions.
 - (d) *Adoption of Rules and Regulations by Director.* The Director shall be authorized to adopt such reasonable rules and regulations as the Director may deem necessary for the proper administration and enforcement of the provisions of this Code; provided, however, such rules and regulations shall not be in conflict with this Code or with any laws of this State.
 - (e) *Determination of Reasonable Time for Compliance.* When calculating a reasonable time for compliance under this Code, the Director shall take into consideration the following criteria:
 - (1) The type and degree of defect cited;
 - (2) Any procedural requirements for obtaining a permit to perform corrective action;
 - (3) The anticipated complexity of the corrective action including but not limited to, seasonal considerations and construction requirements;
 - (4) The intent of a responsible party to repair, demolish or vacate and close the building or dwelling, if such intent has been expressed to the Director;
 - (5) Any other known circumstances beyond the control of the responsible party.
 - (f) *Private remedies.* The authority of the Director to enforce this Code shall not preclude any person affected by a violation of this Code from bringing any action or asserting any defense pursuant to laws such as O.C.G.A. 44-7-2; 44-7-13; 44-7-14; 41-2-5; and 51-1-6 and, as such might be amended; or any other applicable provisions of law.
 - (g) *Liability.* Officers or employees, or member of the In Rem Review Board, charged with the enforcement of this Code, in the discharge of their duties, shall not thereby render themselves liable personally, and are hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of their duties. Any suit brought against any officer or employee because of this Code shall be defended by the Department of Law until the final termination of the proceedings.

Sec. 8. - Inspections.

- (a) The Director is hereby authorized and directed to make inspections to determine the condition of property located within the City in the interest of safeguarding the health and safety of the occupants and the general public, or in the interest of enforcing any applicable provisions of this Code. Upon presentation of proper credentials, the Director may enter any property at any reasonable time to perform any duty imposed by the Code pursuant to a lawfully issued search warrant. The Director may enter such property at such time to perform said duties without a search warrant only when one of the following circumstances exist:
 - (1) An emergency situation which requires that the property be immediately inspected in order to adequately protect public health or safety, or to prevent substantial physical damage to any property;

- (2) The property is both vacant and unsecured; or
- (3) The occupant, owner, or operator requests or otherwise consents to the search;

Provided, however, that no warrantless search may be made under exceptions (2) or (3) above over the direct objection of any person(s) in control of the premises at the time of the inspection.

(b) Scheduling of inspections shall be arranged on the following basis:

- (1) Within ten days of any request or complaint by the owner, operator or occupant. Such request or complaint by a tenant shall not in itself constitute a basis for the owner or operator to terminate such tenant's lease or rental agreements;
- (2) Pursuant to inspections conducted for the purpose of insuring that rental property complies with this Code and within twelve (12) months after the effective date of this Code and every five (5) years thereafter, the Director shall study the City's rental housing stock for the purpose of developing periodic, area-wide inspection plans for the City's rental housing stock. Within six months after the completion of such study, the Director shall develop, adopt and promulgate a five year plan for the inspection of buildings with special uses and rental dwellings based on such factors as the type of building; the nature of its use; its condition; information indicating the existence of violations of this Code; the passage of time since the last inspection; general neighborhood conditions; and other similar considerations relevant to the inspections of buildings or dwellings for the purpose of enforcing this Code;
- (3) Vacant dwellings which are boarded and made inaccessible and interior requirements have been held in abeyance pursuant to Section 29, shall be inspected at least once every six months. A vacant dwelling shall also be inspected within ten (10) days of any complaint by a person residing in the neighborhood where the subject dwelling is located;
- (4) In addition to the foregoing provisions, any property may be inspected whenever the Director has reason to believe that it is in violation of any applicable provision of this Code.

(c) No official or employee of the City making an inspection of properties for any purpose set forth in this Code shall:

- (1) have any financial or personal connection with the owner or operator of the inspected property, nor shall any such official or employee have any direct or indirect financial interest in any certificate, license, repairs or corrections which may be required;
- (2) refer or recommend to any owner or operator any contractor, builder, construction mechanic or other person who would gain financial benefit from such referral or recommendation.

(d) The Director shall adopt policies, rules and regulations to ensure that all employees or officials who make inspections under this code are adequately trained and certified.

(e) An inspection made under this Code upon the request of the owner shall be made only after the appropriate fee hereinafter has been paid to the City, to wit:

- (1) Fifty Dollars (\$50.00) for a structure containing one through twelve units located on no more than two floors.
- (2) One Hundred Dollars (\$100.00) for a structure containing more than twelve units located on no more than two floors.
- (3) Fifty Dollars (\$50.00) per floor for structures containing units located on more than two floors.

Such a fee shall not be required from an owner requesting an inspection of a rental dwelling due to a complaint about the occupant.

Sec. 9. - Maintenance, Availability and Certification of Records.

- (a) *Index.* All orders, certificates, notices, waivers, and reports made pursuant to this Code shall be maintained for at least five years.
- (b) *Availability.* The records referred to in subsection (a) shall be made available during business hours for examination and/or copying as required by law.
- (c) *Certification.* The Director shall designate an employee or employees as keepers of the records referred to in subsection (a). Such employee or employees shall be authorized to certify under seal, copies of such records for admission in evidence under O.C.G.A. 24-7-21.

Sec. 10. - Reserved.

Sec. 11. - Reserved.

Sec. 12. - Abatement of Nuisance.

Nothing contained in this Code shall prohibit the Director from bringing a proceeding to abate a nuisance as provided by O.C.G.A. 41-1-1 through 41-2-17; or Power 31 enumerated in Appendix I of the Charter of the City of Atlanta, Georgia; or as otherwise provided by law. An action brought pursuant to this section, shall not be superseded by any other provision of the Atlanta Code.

Sec. 13. - Placarding of Occupied Property.

- (a) Pursuant to a hearing by the court when charges have been brought against an owner or operator, the court is authorized to determine if the dwelling unit is unfit for human habitation. If so determined, it shall order the director to place a signed and dated placard to that effect, on the dwelling unit determined to be unfit for human habitation. The court shall specify a date by which the dwelling unit shall be vacated unless rendered fit for human habitation. Such placard shall contain the following words:

"This dwelling unit has been adjudicated by the Municipal Court of the City of Atlanta to be in violation of the Atlanta Housing Code and determined to be unfit for human habitation. It shall be unlawful for this dwelling unit to be occupied after (date) until all repairs required by the Atlanta Housing Code have been made and approved by the director of the bureau of neighborhood services. Mutilation or unauthorized removal or defacing of this placard shall be an offense punishable by fine and/or imprisonment."

- (b) *Unlawful to Occupy Placarded Dwelling Unit.* After the date specified by the court, it shall be unlawful for any person to occupy the placarded dwelling unit or for the owner or operator to allow occupancy of the dwelling unit or rent or lease the dwelling unit for occupancy.
- (c) *Unlawful to Allow Placarded Dwelling Unit to be reoccupied.* It shall be unlawful for an owner or operator to allow a placarded dwelling unit to be reoccupied.
- (d) *Placarded notice to general public.* The posting of the placard as provided for herein and the recording of such in the records of the bureau of code compliance of such action shall be notice to the general public that it shall be unlawful for any owner to allow the dwelling or structure to be occupied, and unlawful for any person to occupy, as provided herein; and no further notice by the city shall be required to be given to any subsequent owner or occupant.
- (e) *Defacement of Placard.* It shall be unlawful to deface, alter, or destroy, cover or remove said placard.

- (f) *Removal of Placard by the Director.* The Director shall remove the placard when compliance of all violations of this Code necessary to render property fit for habitation has been effected.

Sec. 14. - Placarding of Vacant Property.

- (a) *Placarding Vacant Property; Service and Filing of Notice.* The Director shall place a dated and signed placard on vacant property when the Director determines, pursuant to inspection, that there exists at least one of the conditions enumerated in Section 19. The Director shall notify the owner or operator of such property by any method prescribed in this Code that the property has been placarded, the specific reason(s) therefore and conditions in violation of this Code. Such notification sent by registered mail with return receipt requested, shall advise the owner of the right of appeal. A copy of the notice shall be filed in the office of the Bureau of Buildings.

- (b) *Contents of Placard.* The placard issued pursuant to Subsection (a) hereinabove shall contain the following words:

"WARNING. This property has been inspected and conditions have been found which are unsafe or unsanitary and which are in violation of the Atlanta Housing Code. It shall be unlawful for this property to be occupied until repairs required by the Atlanta Housing Code as being necessary to again render this property fit for human habitation, have been made in a satisfactory manner and approved in writing by the director of the bureau of neighborhood services. Mutilation or unauthorized removal or defacing of this placard shall be an offense punishable by fine or imprisonment."

- (c) *Occupancy of Placarded Property.* It shall be unlawful for an owner or operator to allow occupancy of property and for any person to occupy a property which has been placarded as provided by subsection (a) until after all applicable requirements of this Code have been met; provided that the Director may grant written permission to occupy such property for a ninety (90) day period to enable correction of the conditions for which the property has been placarded.

- (d) *Reserved.*

- (e) *Notice to General Public.* The posting of the placard as provided for herein and the recording of such action in the records of the Bureau of Buildings shall be notice to the general public that it shall be unlawful for any owner or operator to allow the property to be occupied, and unlawful for any person to occupy as provided herein; and no further notice by the City shall be required to be given to any subsequent owner.

- (f) *Defacement of Placard.* It shall be unlawful to deface, alter, destroy, cover, or remove said placard.

- (g) *Removal of Placard.* The Director shall remove the placard after substantial compliance with this Code has been effected.

Sec. 15. - Removal and Disposal of Junked Vehicles.

- (a) A junked vehicle constitutes a health hazard and an unsightly nuisance and is subject to removal and disposal. The director may cause for the removal from private property and disposal of junked vehicles whether or not at the request of the landowner or the owner of the junked vehicle.

- (b) Removal by the director shall not apply to any junked vehicle:

- (1) located within the premises of any junkyard or automobile salvage yard complying with all the laws of this state and city relating to the licensing and regulating of motor vehicles or junkyards; or

- (2) meeting such definition by sole virtue of being inoperable, incapable of being legally operated on the public roads, or not bearing a current registration or a current license plate or a current state required inspection sticker. Such junked vehicles shall still be subject to enforcement action pursuant to Section 18
- (c) Once a junked vehicle has been towed or removed from private property, the bureau of code compliance shall notify and provide to the Atlanta Police Department, a description of the vehicle including the vehicle identification number, if visible, and the location from which the vehicle was removed. The police department shall maintain a log identifying such vehicles.
- (d) Removal and disposal of junked vehicles as provided herein may be carried out by private individuals and firms contracted with the city and whose operations includes the recycling of discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof. Any junked vehicle which has been removed from private property as provided herein shall be disposed of as provided by law.

Sec. 16. - Reserved.

Sec. 17. - Failure to Comply.

- (a) It shall be unlawful for an owner, operator, or occupant to fail to comply with any applicable provision of this Code.
- (b) If a placard or a violation of Section 22(b), has not been complied with, the director is authorized to take any of the following actions, as appropriate:
 - (1) Initiate removal and disposal of junked vehicles in accordance with Section 15
 - (2) Reserved;
 - (3) Initiate procedures for court action as provided in Section 18
 - (4) Initiate in rem proceedings as provided in Article III;
 - (5) Extend the compliance time for extenuating circumstances as listed in Section 7(e).

Sec. 18. - Judicial Proceedings.

- (a) *Charges and Summons.* If the owner, operator or occupant violates Section 17(a), the Director shall be authorized to issue to such person a copy of charges and summons, directing the person to appear before the Court at a specified time and place to answer the charges. Service of such charges and summons shall be accomplished as provided by State Law.
- (b) *Emergency Power.* Notwithstanding any other provisions of this Code, whenever the Director shall determine that conditions constitute a clear and present danger or hazard to person or property, the Director shall be authorized to cause the charges and summons provided by subsection (a) hereinabove to issue instanter or to take any other appropriate action necessary to correct said conditions.
- (c) *Hearings; Orders.*
 - (1) The Court shall hear the evidence and determine whether or not the person named in the summons has violated this Code as charged. The Court shall enumerate the conditions that it determines are in violation of this Code and impose or require appropriate penalties for each such violation.

- (2) The Court shall issue a written finding of fact and conclusion of law incorporating the enumerated conditions and penalties referred to in Subsection (1) and shall provide a copy of said order to the defendant and Director.
 - (3) **Placarding of Occupied Property.** Occupied property shall be placarded only by order of the court after the property has been adjudicated to be unfit for human habitation.
- (d) **Penalties.** Failure to comply with any provision of this Code shall constitute an offense and shall be punishable as follows:
- (1) A first conviction for violation of this Code shall be punishable by a fine of not less than \$250.00 nor more than \$1,000.00 or imprisonment for not more than 60 days or both if the violation has been brought into compliance at the time of sentencing. A first conviction for violation of this Code shall be punishable by a fine not less than \$500.00 nor more than \$1,000.00 or imprisonment for not more than 60 days or both if the violation has not been brought into compliance at the time of sentencing.
 - (2) A second conviction for violation of this Code shall be punishable by a fine of not less than \$500.00 nor more than \$1,000.00 or imprisonment for not more than 60 days or both if the violation has been brought into compliance at the time of sentencing. A second conviction for violation of this code shall be punishable by a fine of \$1,000.00 or imprisonment for not more than 60 days or both if the violation has not been brought into compliance at the time of sentencing.
 - (3) A third conviction for violation of this Code shall be punishable by a fine of \$1,000.00 or imprisonment for not more than 60 days or both.
 - (4) A fourth or subsequent conviction for violation of this Code shall be punishable by imprisonment for no less than 30 days and no more than 180 days.
 - (5) The municipal court shall levy a fee of \$50.00 for the inspection of the property by a code enforcement officer for which the citation was issued. In each instance where the municipal court resets the case to afford the defendant an opportunity to come into compliance, the municipal court shall levy a fee of \$50.00 for each re-inspection by a code enforcement officer.
 - (6) Where a person shall be convicted of more than one offense and sentenced to imprisonment, such sentences shall be served concurrently; provided, however, that the judge may, at his or her discretion, direct that these sentences run severally if said sentence would not exceed 180 days.
 - (7) Any or all of the penalties prescribed in this subsection may be imposed upon the appropriate officers or partners of a corporation, partnership or other legal entity that acts unlawfully pursuant to Section 17(a).
- (e) **Separate Offenses.** Any person failing to comply with any provision of this Code shall be guilty of an offense. Each and every day the condition is maintained or the activity is conducted after the expiration of all reasonable time given to comply with any provision of this Code shall constitute a separate offense as to each violation of the Code and shall be punishable as provided in Subsection (d) hereinabove.
- (f) Any person who knowingly and willing aids another in violating the provisions of this Code shall be a party to the offense and subject to the penalties provided hereinbefore.
- (g) **Reports of Disposition of Cases.** The Clerk of Municipal Court shall prepare weekly reports of the disposition of Housing Code Cases and distribute said reports to the Director.

- (h) Notwithstanding paragraph (d), failure to comply with any provision of Section 19 of this Code shall constitute an offense and shall be punishable as follows:
- (1) A first conviction for violation of Section 19 of this Code shall be punishable by a fine of not less than \$500.00 nor more than \$1,000.00 or imprisonment for not more than 60 days or both if the violation has been brought into compliance at the time of sentencing. A first conviction for violation of Section 19 of this Code shall be punishable by a fine of not less than \$750.00 nor more than \$1,000.00 or imprisonment for not more than 60 days or both if the violation has not been brought into compliance at the time of sentencing.
 - (2) A second or third conviction for violation of Section 19 of this Code shall be punishable by a fine of \$1,000.00 or imprisonment for not more than 60 days or both.
 - (3) A fourth or subsequent conviction for violation of this Code shall be punishable by imprisonment for no less than 30 days and no more than 180 days.

Sec. 19. - Highly Hazardous Conditions.

It shall be unlawful for any owner or operator to allow, or for any occupant to cause the following highly hazardous property conditions, any of which may constitute a nuisance as defined in Section 6 and 12.

- (a) Roofs, floors or supporting members, including, but not limited to, girders, sills, joists and studs, which show thirty-three percent (33%) or more damage or deterioration or which are of sufficient size or strength to safely support imposed loads;
- (b) Non-supporting enclosing or outside walls or coverings which show fifty percent (50%) or more damage or deterioration;
- (c) Defective or improperly maintained electrical, heating, ventilation, sanitation or like facilities which endanger or insufficiently protect the health, safety or general welfare of the occupants;
- (d) Means of egress and ingress, which in the determination of the Director, are defective or unsafe, or substantially smaller than the dimensions required by law;
- (e) Vacant Dwellings which are open and unsecured against unforced entry;
- (f) Conditions which, in the determination of the Director, are dilapidated, decayed, unsafe, unsanitary or that unreasonably expose occupants or the general public to illness, disease or physical injury;
- (g) Conditions which in the determination of the Director, unreasonably expose occupants to rain, moisture or cold air;
- (h) Any other condition which, in the determination of the Director, is unsafe, unsanitary or dangerous to the health, safety or general welfare of the occupants or general public.

APPENDIX B

A. ARTICLE II ATLANTA HOUSING CODE

(MINIMUM STANDARDS INCLUDING REQUIREMENTS FOR VACANT PROPERTIES)

Sec. 20. - Minimum Standards for Base Equipment and Facilities.

Every applicable dwelling unit and its premises shall conform to this Section unless otherwise stated herein, the owner and/or operator shall be responsible to provide or supply and maintain all required equipment and facilities. The installation of sub-meters to measure water usage shall be required as described in Article II, Section 154-115 of the City Code for newly constructed multifamily or mixed use buildings containing residential units.

- (a) *Bathroom.* Each dwelling unit shall contain a bathroom.
 - (1) The bathroom shall be a room containing no less than thirty-five (35) square feet in area within the exterior walls of the unit and shall afford privacy to a person therein. When existing buildings do not meet these standards, alternative arrangements of fixtures and space may be approved by the Director;
 - (2) The bathroom shall contain a flush water closet, lavatory basin and bathtub or shower and an approved interior door and latch to afford privacy to the occupant. Plumbing and other fixtures shall be maintained in good operating condition and shall be free from leaks, defects, obstructions and other unsanitary conditions.
- (b) *Kitchen.* Every dwelling unit not within a dormitory shall contain a kitchen within the outside walls of the unit. The kitchen shall contain a kitchen sink, separate and apart from the lavatory basin required under subsection (a) (2) herein, along with cabinets or shelves for storage of equipment and utensils, work space and adequate space for a stove and a refrigerator. Plumbing and other fixtures shall be maintained in good operating condition and shall be free from leaks, defects, obstructions and other unsanitary conditions.
- (c) *Water supply and sewer system.* Every kitchen sink, lavatory basin, bathtub, shower, flush water closet or other plumbing appurtenances shall be properly connected to an approved water supply and public sewer or to an approved sewerage disposal system. All sinks, lavatory basins, bathtubs and showers shall be supplied with both hot and cold running water and shall be maintained in good operating condition. It shall be the responsibility of the property owner, operator or agent to furnish the required water supply to the occupants of dwelling units in buildings containing or designed to contain two or more dwelling units which are served by the same water meter.
- (d) *Water Heating Facilities.* Every dwelling shall contain water heating facilities which shall be properly connected with the hot water lines required under the provisions of Subsection (c) hereinabove and which shall be maintained in good operating condition. Such facilities shall be capable of heating water so as to permit a reasonable amount of water for ordinary usage to be drawn at any required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than one hundred (100°) degrees Fahrenheit within a reasonable time after fully opening the fixture outlet. All water heating facilities shall be properly installed and provided with all appropriate safety valves and vents as required by the City of Atlanta Plumbing, Gas and Mechanical Codes.

- (e) *Means of Egress.* The provisions of the National Fire Prevention Association, Life Safety Code of 1981 for existing dwellings are hereby incorporated by reference and made a part of this Code.
- (f) *Smoke Detectors.* Approved smoke detectors shall be installed on each level of every dwelling unit, which when activated shall give an alarm audible in all sleeping areas.
- (g) *Garbage Facilities.* Every dwelling unit shall have adequate serviceable garbage facilities or covered garbage storage containers of the size and type prescribed by the City's Bureau of Sanitary Services.

Sec. 21. - Minimum Standards for Light, Ventilation and Heating.

- (a) *Total Window Area.* Every habitable room shall have at least one transparent or translucent window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be eight (8%) of the floor area of such room; except that, whenever walls or other portions of structures are located less than three feet from the window and extended to a level above that of the ceiling of the room, the minimum total window area, measured between stops, shall be twelve (12%) per cent of the floor area of such a room. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least eight (8%) per cent of the total floor area of such room. Exceptions to the requirements of this Subsection shall be permitted by the Director where the room is air conditioned or mechanically ventilated and adequately lighted in a manner which satisfies the requirements of any other applicable City code.
- (b) *Adequate Ventilation.* Every habitable room shall have at least one window or skylight which can be opened easily, or such device as the Director determines will adequately ventilate the room.
- (c) *Window Area.* The total window area which can be opened in every habitable room shall be equal to at least forty-five (45%) percent of the window area as required in Subsection (a) hereinabove, except where some other device is supplied which the Director determines provides adequate ventilation and lighting.
- (d) *Light and Ventilation for Kitchen, Bathroom and Water Closet Compartment.* Every kitchen, bathroom and water closet compartment shall comply with the light and ventilation requirements for a habitable room contained in Subsection (a) and (b) hereinabove, provided that an exception to this requirement shall be permitted by the Director where such room is air conditioned or mechanically ventilated and adequately lighted.
- (e) *Electrical Service.* Every habitable room and kitchen in such dwelling shall contain at least two separate floor or wall-type electrical convenience outlets in addition to an outlet for general illumination or a third electrical convenience outlet. Every water closet compartment, bathroom, laundry room, furnace room and public hall shall contain at least one supplied ceiling or wall-type electric light fixture. Each bathroom or water closet compartment shall also have at least one electrical convenience outlet which may be a part of a wall type fixture. All electrical fixtures, receptacles, outlets, equipment and wiring shall be maintained in good repair and in safe and satisfactory operating condition, and shall be installed and connected to a suitable electric circuit in accordance with the Electrical Code of the City. All bathroom or water closet convenience outlets shall be properly connected to an approved ground fault interrupt device.
- (f) *Heating Facilities.* Every dwelling unit shall be provided with primary heating facilities which, shall be installed in accordance with the City of Atlanta's Heating, Ventilation and Air Conditioning Code and shall be capable of safely and adequately heating each habitable room, kitchen, bathroom or water closet compartment to a temperature of seventy-two (72°) degrees Fahrenheit in the area

three feet above the floor and three feet from the exterior wall when the outside temperature is twenty-two (22°) degrees Fahrenheit.

- (1) The following heating facilities, for the purpose of this Code, shall not be considered a primary heating facility:
 - a. open Fireplaces
 - b. portable heaters (including electric and liquid fired heaters)
- (2) Gas fired heaters installed in bedrooms or rooms generally kept closed shall be of the vented type and shall be connected to an effective chimney or gas vent and equipped with a 100% safety shut-off device;
- (3) All unvented gas fired room heaters shall be equipped with an oxygen depletion sensitive safety shut-off system. Unvented room heaters shall not be installed in bedrooms or other sleeping rooms;
- (4) All heating equipment shall be listed and installed in accordance with the listing and the manufacturers instructions;
- (5) Whenever the supply of heat from heating equipment is controlled by the owner, operator or person other than the tenant, such person shall supply heat to all occupied dwelling units from September 15th through May 1st of each year in such amounts as is necessary to maintain a minimum temperature of:

68 degrees Fahrenheit from 7:30 A.M. to 10:30 P.M.

63 degrees Fahrenheit from 10:30 P.M. to 7:30 A.M.

- (g) *Hall and Stairway Lighting.* The provisions of the National Fire Protection Association Life Safety Code of 1981 for existing dwellings are hereby incorporated by reference and made a part of this Code.
- (h) *Insect Protection Screens.* Every door opening directly from a dwelling unit to outdoor space shall be supplied with a fourteen by eighteen inch mesh wire screen or equivalent protective screen; and, with the exception of sliding glass doors, shall possess a selfclosing device consisting of at least a spiral spring. Every window with an opening to outdoor space used or intended to be used for ventilation shall likewise be supplied with adequate screens. Such screens shall not be required for doors or windows in rooms which are air conditioned or mechanically ventilated, nor shall they be required above the fourth floor of a building, unless specifically required by the Director because of insect prevalence.
- (i) *Rodent Protection Screens.* Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with a screen or such other device as will effectively prevent their entrance.

Sec. 22. - Safe and Sanitary Maintenance of Dwellings.

- (a) *Generally.* The construction or installation of every new supplied facility, piece of equipment or utility which is required under Article II of this Code, shall be governed by the pertinent City code for construction or installation and shall be approved and permitted by the appropriate division and following its construction or installation, every supplied facility, piece of equipment or utility shall be maintained in satisfactory and safe working condition.
- (b) *Prohibited Acts.* No owner, operator or occupant of any occupied dwelling shall willfully cause the removal, interruption or discontinuance of any utility service including, but not limited to, water and

heating facilities as defined in section 21(f) during the four-month period beginning on the first day of November 1 of each year and ending on the last day of February of the next succeeding year, or any required service or facility, including, but not limited to, operating sanitary facilities (such as toilets, water closets, urinals, etc.) or equipment except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies. Failure to comply with this provision is unlawful and shall constitute an offense as provided in section 18(d).

- (c) *Storage of Flammable liquids prohibited.* A dwelling, Multifamily dwelling, dwelling unit, or rooming unit shall not be located within a building containing any establishment handling, dispensing or storing of flammable liquids with a flash point of one hundred ten (110) degrees Fahrenheit or lower.

Sec. 23. - Structural Requirements, Exterior and Interior.

Every foundation, exterior and interior wall, appurtenances, roof and all other exterior surfaces shall be maintained in a state of workmanlike maintenance and repair and shall be substantially free from decay and deterioration, weathertight, watertight, safe, sanitary and rodent proof.

- (a) *Foundation.* The foundation elements shall be capable of supporting the building and any load which normal use may cause to be placed thereon and shall be maintained in sound condition and workmanlike maintenance and repair.
- (b) *Exterior Walls.* Exterior walls shall be substantially free of holes, breaks, splits or loose or decayed boards or members, and of any other defects which allow penetration of moisture or other elements of weather to the interior portions of the walls or to the habitable areas of the building, and shall be maintained in sound condition and workmanlike maintenance and repair.
- (c) *Roofs.* Roofs shall be structurally sound and tight; shall have no defects which admit moisture or cause dampness in the walls or interior portion of the building; and shall be maintained in sound condition and workmanlike maintenance and repair.
- (d) *Stairs and Porches.* Inside and outside stairways and porches and any appurtenances thereto shall be capable of supporting loads that normal use may cause to be placed thereon, and shall be maintained in sound condition and workmanlike maintenance and repair.
- (e) *Protective Railings.* Protective railings capable of supporting loads that normal use may cause to be placed thereon shall be required on any unenclosed portion of the building more than thirty inches above ground level or on any stairs containing four (3) or more risers.
- (f) *Windows.* All windows and their appurtenances shall be maintained in sound condition and workmanlike maintenance and repair as follows:
 - (1) Every window sash shall fit substantially tight within its frame, shall be fully supplied with tightly fitting panes which are glass or a suitable glass-substitute and which are without cracks or holes, and shall be sealed against the muntins with glazing compound or any other suitable sealers;
 - (2) Every window, other than a fixed window not designed for ventilation, shall be capable of being easily opened, held in position, and secured in the closed position by window hardware;
 - (3) Every exterior window frame shall be plumb and square and in such relation to adjacent wall construction so as to exclude water and substantially exclude cold air from entering the dwelling or dwelling unit.

- (g) *Interior Doors.* All interior doors shall fit reasonably well within their frames and all such doors and the hinges and latches thereon shall be maintained in sound condition and workmanlike maintenance and repair.
- (h) *Exterior Doors.* All exterior doors shall be maintained in sound condition and shall have suitable door hinges, latches and locks reasonably capable of resisting illegal entry and maintained in sound working condition and good repair. Such doors shall be plumb and square within their frames so as to exclude water and rodents and substantially exclude cold air, moisture and insects from entering the dwelling.
- (i) *Exterior Door Frames.* All exterior door frames shall be maintained in sound condition and shall be plumb and square and in such relation to adjacent wall construction so as to exclude rain and substantially exclude cold air from entering the dwelling or dwelling unit.
- (j) *Interior Floors, Walls and Ceilings.* All interior floors, walls and ceilings, along with their structural supports, shall be substantially weathertight, vermin and rodent proof and shall be maintained in sound condition and workmanlike maintenance and repair as follows:
 - (1) Plaster or dry wall finish on walls and ceilings shall be tight and free from holes or breaks;
 - (2) Floors shall be free of decay, holes, breaks, loose or warped members; reasonably level; safe; and capable of supporting the load which normal use may cause to be placed thereon;
 - (3) Kitchen and bathroom interior walls and floors shall be substantially impervious to moisture so as to protect such walls and floors and permit these surfaces to be maintained in a clean, safe and sanitary condition.
- (k) *Protective Treatment.* All exterior wood surfaces other than cedar, cypress or redwood shall be protected from the elements and decay by paint or other protective covering or treatment. All interior building surfaces shall be protected from damage by decay, ordinary use and corrosion. Exterior metal surfaces shall be protected from corrosion by paint or other protective covering.
- (l) *Supporting Structural Members.* The supporting structural members of every building used, designed or intended to be used for human habitation, including, but not limited, to sills, rafters, joists, girders, beams, headers, lintels and studs shall be maintained in sound condition and workmanlike maintenance and repair and shall show no evidence of decay or deterioration which would render them incapable of carrying loads placed thereon by normal use.

Sec. 24. - Minimum Space, Use and Location Requirements.

Every applicable dwelling and its premises shall conform to this Section.

- (a) *Required Space in Dwelling Units.* Every dwelling unit shall contain a minimum gross floor area of not less than one hundred fifty (150) square feet for the first occupant, and one hundred (100) square feet for each additional occupant. This floor area shall be calculated on the basis of the total habitable area of all habitable rooms.
- (b) *Sleeping Room Floor Space.* In every dwelling unit of two or more rooms, every room occupied for sleeping by one occupant, except as indicated in Subsection (e) hereinafter, shall contain at least seventy (70) square feet of floor space; and every room occupied for sleeping purposes by more than one occupant shall contain at least fifty (50) square feet of floor space for each occupant thereof.

- (c) *Ceiling Height.* At least one-half of the floor area of every existing habitable room shall have a minimum ceiling height of seven (7) feet. The floor area of that part of any currently existing room where the ceiling height is less than five (5) feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.
- (d) *Conditions for Inhabiting Basements.* No cellar shall be used as a habitable room. No basement shall be used as a habitable room or dwelling unit unless the following requirements are met:
 - (1) The floor and walls are impervious to leakage of underground and surface run-off water and are adequately protected against dampness;
 - (2) The required minimum window area is located entirely above the grade of the ground adjoining such window area or is equipped with a window well providing adequate light and ventilation;
 - (3) The basement complies with all other appropriate provisions of Section 20-26.
- (e) *Standards for Charitable and Similar Institutions.* In charitable institutions, day nurseries and like locations, where persons are provided free or emergency sleeping facilities in large numbers for brief periods of time and on a fluctuating basis, the minimum standards specified herein in subsections (a) and (b) may be reduced by fifty percent (50%) upon the written approval of the Director.

Sec. 25. - Owner and Tenant Responsibility for Cleanliness of Property.

- (a) It shall be the lawful duty of the owner or operator and the occupant of any premises, within their respective areas of responsibility as specified herein below to keep interiors and exteriors, including premises, yards, lawns, courts and alleys clean, clear and free of any public or attractive nuisance, accumulation of dirt, junk, junk vehicles, rubbish, garbage, debris, combustible materials, kudzu, excessive growth of weeds, grass, shrubs, bushes or similar matter conducive to rodent, vermin or insect infestation and to ensure all vehicles are parked on all-weather surfaces at all times. It shall be unlawful for the owner and tenant to permit grass/weeds to reach a height exceeding twelve (12) inches on their property. Any person violating the overgrown grass/weeds provision shall be fined with penalties as provided in Subsection 18(d). Interiors and exteriors shall also be kept clean, clear and free of any conditions conducive to the spread of fire or disease. The exterior of the premises and the condition of necessary structures shall be maintained so as not to constitute a nuisance under Section 6 to neighboring or adjoining property owners. (This statement clarifies and strengthens care of the interior and exterior of property.) Responsibility for cleaning the interior of dwelling units shall include keeping the walls, floors and ceilings sanitary and free from accumulation of dirt or trash, and where appropriate, may require a coating on interior surfaces to make them resistant to vermin and insect infestation.
- (b) It shall be the specific responsibility of the owner or operator:
 - (1) To comply with Section 20 of this Code;
 - (2) To maintain cleanliness of Shared or Public Area;
 - (3) To maintain cleanliness of vacant dwellings. Every owner or operator of a vacant dwelling shall be responsible for maintenance of the interior, exterior and premises in a clean sanitary condition and secured against unauthorized entry;
 - (4) To maintain screens. Every owner or operator of a dwelling unit shall, before renting such dwelling unit, provide serviceable screens and screen doors whenever the same are required

under the provisions of this Code; and, when necessary such screens shall be replaced by the owner or operator due to deterioration occasioned by normal wear and tear only;

- (5) To provide for the extermination of Insects, Rodents and Other Pests. Every owner or operator of a dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the property; provided that, every occupant shall be required to eliminate or minimize the presence of pests by performing the duties under Subsection (c).

(c) It shall be the specific responsibility of the tenant for the:

- (1) Maintenance of the unit which he or she occupies. Every tenant of a dwelling unit shall keep in a sanitary condition and upon departure shall leave, in a clean and sanitary condition, that part of the dwelling unit and property thereof which the tenant used or possessed;
- (2) Maintenance of screens. Every tenant of a dwelling unit shall be responsible for maintaining such screens and screen doors in good serviceable condition except deterioration occasioned by normal wear and tear;
- (3) The maintenance of plumbing fixtures and other fixtures. Every tenant of a dwelling unit shall be responsible for exercising reasonable care in the use of plumbing and other fixtures in the dwelling unit and its premises;
- (4) The maintenance of the Dwelling Unit. Every tenant of a dwelling unit shall be responsible for exercising reasonable care in the use of the dwelling and its premises. The tenant shall not place on the premises, any material which may cause a fire hazard or otherwise endanger the health or safety of any tenant of such dwelling, nor place in storage on the premises any furniture, equipment, or material which harbors insects, rodents, or other pests;
- (5) The maintenance of batteries, where utilized, in smoke detectors that are provided in accordance with Section 20(f);
- (6) The providing of access at reasonable hours to dwelling units for owners or operators to provide routine maintenance and extermination of insects or rodents;
- (7) Every tenant shall dispose of his/her garbage or rubbish in a sanitary manner;
- (8) Every tenant of a single family dwelling shall be responsible for the extermination of any insects, rodents or other pests;
- (9) Every tenant of a dwelling or dwelling unit causing damage to said premises so that it does not comply with the requirements of this Code, shall be subject to the penalties hereof, and shall be responsible for all damage to the real property within an occupant's possession or control. If an inspection of a dwelling or dwelling unit prior to or subsequent to the leasing thereof, indicates that it complies with all Codes, Ordinances and Statutes relating thereto, the tenant in possession at the time of said inspection or if there is no tenant in possession at said time, then the next tenant shall be presumed to have caused said damage/or Code violation as the case may be.

(d) It shall be unlawful for the owner, occupant or operator of any lot, tract, parcel of land or premises in the City of Atlanta, to have, permit or allow any junk vehicle to be parked, let or maintained thereon; and it shall be unlawful for any person to cause, have, let, maintain or place such a junk vehicle on the real property of another. Except that it shall not be unlawful to maintain, in an otherwise lawful manner:

- (1) Any vehicle in an enclosed building;

- (2) Any vehicle on the premises of a business enterprise operated in a lawful manner, when necessary to the operation of such business enterprise; or
- (3) Any vehicle on property occupied and used for repair, reconditioning and remodeling of motor vehicles in conformance with the zoning ordinances of the city.

The Provisions of this Section shall not waive the owner of the responsibility to make repairs.

- (e) It shall be unlawful for the owner, occupant or operator of any lot, tract, parcel of land or premises in the City of Atlanta, to conduct, permit or allow the repair or servicing of a motor vehicle on such real property; and it shall be unlawful for any person to cause, permit or allow the repair or servicing of a motor vehicle on the real property of another. Except that it shall not be unlawful to repair and service a motor vehicle, in an otherwise lawful manner:
 - (1) Any vehicle that is the property of the owner or occupant of the real property, as established by proof of insurance or vehicle registration;
 - (2) Any vehicle in an emergency situation where such repairs are necessary to restore said vehicle to immediate operation;
 - (3) Any vehicle on the premises of a business enterprise operated in a lawful manner, when necessary to the operation of such business enterprise; or
 - (4) Any vehicle on property occupied and used for repair, reconditioning and remodeling of motor vehicles in conformance with the zoning ordinances of the city.
- (f) Outside storage restrictions: All items utilized in connection with a permitted use of the property, but which are stored outside, shall be placed in the rear yard of the primary structure and shall not be visible on the premises from a front view. There shall be no excessive accumulation.

Sec. 26. - Rooming Houses, Boarding Houses, Residence Hotels, Single Room Occupancy Residences and Buildings with Special Uses.

Every rooming house, boarding house, residence hotel, single room occupancy residence and building with a special use shall conform to the requirements of this section.

- (a) *Permit and License.* No person shall operate a rooming house, boarding house, residence hotel, apartment hotel or single room occupancy residence unless such person holds a valid and current permit issued by the Police Department and a valid and current business license. The permit and license shall be in the name of the operator for the specific location where the business is to be located. The permit and business license shall at all times be displayed in a conspicuous and public place within the business. The permit and license are for regulatory purposes and shall not be transferable.
- (b) *Recommendations for Revocation of Permits.* Whenever, upon inspection of any building regulated under this section, the Director finds that conditions or practices exist which are in violation of any provisions of this Code, or of any rule or regulations adopted pursuant hereto, notice shall be given in writing to the operator of such house that the existence of such conditions or practices is unlawful and, unless they are corrected within a reasonable period to be determined by the Director, revocation or the operator's permit will be recommended to the License Review Board of the City. At the end of the designated period, the Director shall reinspect such building and, if it is found that such conditions or practices have not been corrected, the Director may file with the License Review Board a written recommendation that such permit be revoked, stating the reasons therefor. This shall not prevent the Director from taking any other appropriate action against the owner or operator for violations of this Code.

- (c) *Flush Water Closets, Lavatory Basins, Bathtubs and Showers.* At least one flush water closet, one lavatory basin and one bathtub or shower properly connected to an approved water/sewer system shall be supplied for each eight persons or fraction thereof residing within a rooming house, boarding house, or single-room occupancy residence, including members of the operator's family whenever they share the use of such facilities. Where rooms are let only to males, flush urinals may be substituted for not more than one-half the required number of water closets. All such facilities shall be so located within the dwelling as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities. Every lavatory basin, bathtub or shower shall be supplied with both hot and cold running water at all times.
- (d) *Floor Space.* Every room occupied for sleeping purposes by one person shall contain at least one hundred (100) square feet of floor space, and every room occupied for sleeping purposes by more than one person shall contain at least fifty (50) square feet of floor space for each additional occupant thereof.
- (e) *Means of Egress.* Every room unit or boarding unit shall have safe and unobstructed means of egress leading to safe and open space at ground level as required by the laws of this City and State.
- (f) The operator shall be responsible for the sanitary maintenance of the building, including the exterior premises.
- (g) The operator may prepare one or more meals to be served on a regular basis in boarding houses. Community kitchens are expressly prohibited in rooming houses.
- (h) Each community kitchen as defined herein shall have one (1) refrigerator per twelve (12) residents except that one (1) refrigerator per community kitchen shall be required when each residential room contains an individual refrigerator.
- (i) Each residence and single-room occupancy residence shall contain a common area of not less than five (5) square feet per dwelling or dwelling unit with a minimum of 250 square feet. Common areas for this purpose shall include central lobby, recreation, meeting and dining rooms, and community kitchens. Not included are bathrooms, laundries, vending areas and hallways.
- (j) On site management and provisions for check in and check out shall be provided on a 24-hour basis for each single-room occupancy residence, and the operator shall make the premises available at any time to the Police Department and shall make the premises available for inspection by the Bureau of Buildings at any reasonable time.

Sec. 27. - Standards for Owner-Occupied Single Family Structures.

Every owner-occupied single family structure shall conform to the requirements set forth in this Section and Section 19 of this Code.

- (a) Exterior walls shall be substantially free of holes, breaks, splits, loose or decayed boards or member, and of any other defects which allow penetration of moisture or other elements of weather to the interior portions of the walls or to the habitable areas of the building, and shall be maintained in sound condition and workmanlike maintenance and repair.
- (b) All exterior wood surfaces other than cedar, cypress or redwood shall be protected from the elements and decay by paint or other protective coating or treatment; and exterior metal surfaces shall be protected from corrosion by paint or other protective covering.

- (c) The exterior of the dwelling, including its premises, yards, lawns, courts and alleys, shall be kept clean, clear and free of any accumulation of filth, rubbish, garbage, debris, combustible materials, junk, junk vehicles, kudzu, excessive growth or weeds, grass, shrubs, bushes or other matter conducive to rodent, vermin or insect infestation. The dwelling also shall be kept clean, clear and free of conditions conducive to rodent, vermin or insect infestation. The dwelling also shall be kept clean, clear and free of conditions conducive to spread of fire or disease.
- (d) A permanently fixed lavatory basin connected to an approved water supply with running water and connected to an approved sewage disposal system shall be provided.
- (e) A permanently fixed kitchen sink connected to an approved water supply with running water and connected to an approved sewage disposal system shall be provided.
- (f) Heating facilities shall be provided with primary heating facilities which, shall be installed in accordance with the City of Atlanta's Heating, Ventilating and Air Conditioning Code and shall be capable of safely and adequately heating each habitable room kitchen, bathroom or water closet compartment to a temperature of seventy-two (72°) Fahrenheit in the area three feet above the floor and three feet from the exterior wall when the outside temperature is twenty-two (22°) degrees Fahrenheit.
 - (1) The following heating facilities, for the purpose of this Code, shall not be considered a primary heating facility:
 - (1) Open fireplaces
 - (2) Portable heaters (including electric and liquid fired heaters)
 - (2) Gas fired heaters installed in bedrooms or rooms generally kept closed shall be of the vented type and shall be connected to an effective chimney or gas vent and equipped with a 100% safety shut-off device;
 - (3) All unvented gas fired room heaters shall be equipped with an oxygen depletion sensitive safety shut-off system. Unvented room heaters shall not be installed in bedrooms or other sleeping rooms;
 - (4) All heating equipment shall be listed and installed in accordance with the listing and the manufacturers instruction;
- (g) Approved smoke detectors shall be installed on each level of every dwelling unit, which when activated shall give an alarm audible in all sleeping areas.
- (h) A functioning flush water closet properly connected to an approved water supply and sewage system shall be provided in a room separate from other living areas; with an approved interior door and latch to afford privacy to the occupant.
- (i) Any electric circuit, including wires fixtures and outlets, shall be maintained in a workmanlike state of maintenance and repair; adequate overcurrent protection based on existing use shall be provided.
- (j) Any plumbing or gas system, including piping, fixtures and outlets, shall be maintained in a safe condition.
- (k) Any heating, cooling or cooking system using combustible fuel shall be properly ventilated;
- (l) The roof shall be free of leaks or other defects which admit moisture;
- (m) All windows shall contain glass or a suitable glass substitute;

- (n) A covered storage container of the size and type prescribed by the Department of Public Works or otherwise serviceable garbage facilities shall be maintained.

Sec. 28. - Posting of Assigned Numbers.

The owner of any improved parcel of land in the city shall cause the officially assigned street number for such parcel to be posted on the front of the building or in the front yard so as to be clearly visible from the street. Street numbers shall be posted in numerals no less than two and one-half inches in height.

Sec. 29. - Minimum Specifications to Abate Interior Requirements in Vacant Dwelling Units.

- (a) When a vacant, burned or otherwise damaged or deteriorated dwelling has been boarded, corrective action to bring the dwelling into full compliance with the Atlanta Housing Code shall begin within 30 days after the dwelling has been boarded and shall be completed and the boarding removed within a period of six months from the date of the boarding. The dwelling shall be subject to an inspection beginning four months from the date of the boarding. Failure to have begun the corrective action necessary to bring the dwelling into full compliance with the Atlanta Housing Code within 30 days after the dwelling has been boarded, and the failure to allow city code enforcement officers to gain access to the interior of the dwelling after proper notification, shall each constitute a separate violation of this Code.

- (b) The minimum specifications to secure a vacant dwelling to abate interior requirements shall be as follows unless otherwise approved in writing by the director:

- (1) All windows on all levels, through which access to the interior of the dwelling can be made, shall be secured from the interior of the building with ½" exterior grade plywood sheathing, as shown in Exhibit "A";
- (2) All window boards shall be fit to screen inset molding as shown;
- (3) All fabricated boards shall be painted with one coat of primer on the exterior surface;
- (4) All 2" x 4" interior wood stock used in securing the sheathing shall be padded with carpet type material of minimum dimensions 4" x 8" permanently attached. This padding shall be adjusted to prevent damage to interior walls and wood trim;
- (5) All exterior doors of the dwelling shall be secured from the exterior of the dwelling with ¾" exterior grade plywood. Prior to securing plywood cut (4) 2 x 4 pressure treated pieces of lumber to fit the inside of the existing door frame (see attached detail "A"). Screw the pieces into the door frame with a 3" hex head screw at 10" on center.
- (6) Cut ¾" exterior grade plywood to fit and enclose the existing opening, screw 3" hex head screws and washers around the edge of the ¾" plywood at 8" on center. (See attached detail "A")

Note: Each door should be on case by case bases, because not all doors are the same. The contractor should field verify the existing door conditions and make adjustments in the field accordingly.

- (c) Maintenance of a secured vacant dwelling. All openings specified in section 29(b) herein, must remain secured in the manner prescribed in section 29(b) herein and the exterior of the dwelling must remain in compliance with all applicable provisions of this Code. Failure of the owner, operator or agent to maintain the secured vacant dwelling as prescribed herein shall subject them to legal action without further notice from the director.

- (d) Compliance with these minimum specifications shall not include issuance of citations in the event that subsequent thereto the structure becomes open or otherwise falls below these minimum specifications. These specifications shall in no way abate, assume, substitute or replace the responsibility of any dweller and or owner to secure and maintain the premises. These standards shall be reviewed on an annual basis.

APPENDIX C

ARTICLE III ATLANTA HOUSING CODE

(IN REM REVIEW BOARD)

Sec. 30. - Scope.

(a) The In Rem procedure set forth in this Article shall be in addition to any of the procedures set forth elsewhere in this Code. These procedures shall apply to any building or structure regulated by the Atlanta Housing Code or the Atlanta Commercial Institutional and Industrial Building Maintenance Code.

(b) For the Purpose of this Article, the words hereinbelow shall have the following respective meanings.

Applicable standards shall mean:

(1) For Residential Buildings, Section 19 through Section 26 of the Atlanta Housing Code;

(2) For Commercial, Industrial or Institutional Buildings, Section 2090 of the Commercial Institutional and Industrial Building Maintenance Code.

Unfit for occupancy or habitation shall mean: a finding of fact by the In Rem Review Board, of violations of the applicable standards to the extent that the health, safety, general welfare and well being of the occupants or the general public are insufficiently protected.

Value shall mean: the fair market value of a dwelling or building exclusive of the foundation and lot, as determined by the Board in compliance with the applicable standards set forth in this Code.

Sec. 31. - In Rem Review Board.

(a) *Creation.* There is hereby created and established an In Rem Review Board to conduct hearings as provided in Section 32 of this Code and to have other functions, powers and duties as may hereafter be prescribed by the Council of the City.

(b) *Composition; qualifications; term of office.* The board shall be composed of five members, each of whom shall be a city resident; and shall select a chairperson from its membership. Members shall be nominated by the mayor and confirmed by the council. One member shall be a person regularly engaged in residential construction or architecture; one member shall be a person engaged in residential finance or general business and three members shall be persons not otherwise eligible for appointment. The initial board shall contain two members appointed for a term of two years and three members appointed for a term of three years. Thereafter, all board members shall be appointed for three-year terms. The mayor shall recommend to council for its approval the removal of a member of the board for non-performance of duty. Any vacancy in the membership of the board shall be filled for the unexpired term by the same manner of appointment as provided hereinabove.

(c) *Compensation.* Each member of the Board shall be paid \$25.00 for each meeting the member attends.

(d) *Meetings; Quorum.* The Board shall meet monthly or on the call of the presiding officer in a room of adequate size at City Hall. Three (3) members shall constitute a quorum for any meeting of the

Board. The vote of at least a majority of a quorum shall be required to constitute action by the Board on any question or matter before it.

- (e) *Minutes; Adoption of Rules.* The Board shall keep accurate minutes; and such minutes shall include records of each member's presence, vote or abstention as to each question, as well as the Board's other official actions. All such minutes shall be filed in the office of the Bureau of Buildings and shall be public records. The Board shall adopt rules for the conduct of its business and affairs.

Sec. 32. - Inspection and Notice of Hearing.

- (a) *Inspection and Notice of Hearing.* Whenever a written request for inspection is filed with the Commissioner of the Department of Housing by a public official or by at least three (3) residents of the City charging that any dwelling or building is: unfit for human habitation or other use, or whenever it otherwise appears to the Commissioner of the Department of Housing that any dwelling or building is unfit for occupancy or habitation, or if a report has been made by the Commissioner of the Department of Housing pursuant to the Nuisance Abatement provisions of the Code of Ordinances, Section 17-9016 [now § 74-171], pertaining to the existence of any drug crime on vacant, dilapidated dwellings or buildings, the Commissioner of the Department of Housing shall, if preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner and/or parties in interest of such dwelling or building a notice stating therein the Commissioner of Housing's findings and notifying such person that:

- (1) A hearing will be held before the In Rem Review Board at a place within the City on a specified day and time which shall not be less than ten (10) days after the service of said notice;
- (2) The owner and/or parties in interest shall be given the right to file an answer to the notice and to appear in person or otherwise to give testimony at the hearing at the place and time stated in the notice;
- (3) The rules of evidence prevailing in courts of law or equity shall not be controlling in the hearing;
- (4) The Board shall have the authority to administer oaths, affirmations, examine witnesses and receive evidence at the hearing.

- (b) *Files.* The Director shall develop and maintain a file on each property and shall enter therein the minutes which shall be taken at each hearing conducted on the property.

Sec. 33. - In Rem Review Board Hearing.

- (a) The Board shall conduct a hearing on each property presented to it and make the following determinations:

- (1) When the property is occupied, the Board shall determine if the property is unfit for occupancy or habitation.
- (2) The percent of deterioration or damage exclusive of foundation and lot.
- (3) The value of the Building after repairs have been made exclusive of foundation and lot.
- (4) The cost of repairs necessary to bring the building into compliance with the Atlanta Housing Code or the Atlanta Commercial, Institutional and Industrial Building Maintenance Code exclusive of foundation and lot.
- (5) If after the In Rem hearing, drug crimes are found to have been committed in vacant buildings, dwellings or structures, the Board shall issue an order to the Commissioner of the Department

of Housing to demolish the property if the property is more than fifty percent (50%) deteriorated.

The Board shall state its finding of fact in writing.

(b) *In Rem Review Board Orders:*

- (1) After notice and hearing, if the Board finds that any building is unfit for occupancy or habitation, it shall issue an order directing the Director to place a signed and dated placard on the structure stating:

"WARNING. This property has been determined by the City of Atlanta In Rem Review Board to be unfit for habitation or occupancy and in violation of the Atlanta Housing Code/The Atlanta Commercial, Institutional, and Industrial Building Maintenance Code. It shall be unlawful for this building to be occupied after 30 days from the date of this notice, until the property has been rendered fit for human habitation or occupancy in a manner satisfactory to and approved by the Director of the Bureau of Buildings. Mutilation or unauthorized removal or defacing of this placard shall be an offense punishable by fine and/or imprisonment."

- (2) If the Board finds that any building can be repaired at less than 50 percent of the value, exclusive of foundation and lot, it shall issue an order stating:

- a. That the building has been found unfit for occupancy or habitation or other use and can be repaired, improved or altered at a cost constituting a specific percent of the value of the building;
- b. An enumeration of conditions shall be made which render the dwellings or buildings unfit for habitation or occupancy other uses as well as an enumeration of remedial action necessary to correct each of these conditions;
- c. A specified period of time reasonably set in relationship to the necessary remedial action, within which such action shall be completed;
- d. A statement that the owner, and/or party in interest may vacate and comply with Section 29 to abate interior requirements;
- e. A statement that, should the owner and/or parties of interest fail to make the repairs or vacate and comply with Section 29 within the prescribed time, the Director shall cause such building to be vacated, cleaned and closed and that, the amount of the cost of such vacating, cleaning and closing by the Director shall be a lien against the real property for the cost incurred; and
- f. A statement that the order shall be a standing order for a period of two years from the date of the order and that the Director may carry out such standing order from time to time as needed so as to ensure the continued compliance with such order with the cost of such constituting a lien against the real property.

- (3) If the Board finds that the property cannot be repaired at cost of less than 50 percent of the value, exclusive of foundation or lot, it shall issue an order stating:

- a. The building has been found unfit for occupancy or habitation and cannot be repaired, improved or altered at a cost less than 50 percent of the value;
- b. A specified period of time reasonably set directing the owner and parties of interest to commence and complete the vacating and removal or demolition of said building, the cleaning of the premises and planting of grass on the lot;

- c. A statement that, should the owner and parties of interest fail to vacate, remove or demolish the structure and plant ground cover on the lot within the specified time, the Director shall cause the building to be vacated, removed or demolished and ground cover planted on the lot. The amount of the cost of such vacating, removal or demolition by the Director shall result in a lien against the real property for the cost incurred;
- d. A statement that the order shall be a standing order for a period of two years from the date of the order and that the director may carry out such standing order from time to time as needed so as to ensure the continued compliance with such order with the cost of such constituting a lien against the real property; and
- e. The Director shall serve the above orders of the Board on the person in possession, owner and parties of interest.

Sec. 34. - Occupancy of property unfit for habitation prohibited.

It shall be unlawful for any person, business, or entity to occupy or allow the occupancy of any property which has been declared unfit for human habitation by the In Rem Review Board.

Sec. 35. - Failure to Comply with Orders of the Board.

Should the owner and/or parties in interest fail to comply with any order of the board within the time specified by the board, the director shall implement the order. At any time subsequent to initial carry out of the order but during the pendency of the standing order of the board, the director shall implement the order as many times as necessary, in his discretion, to ensure continued compliance with the order. In the event that the director determines the order must be carried out for a second or subsequent time, the director shall give notice in the manner outlined in Section 39(4) of this article at least 14 days prior to carrying out such order.

Sec. 36. - Demolition of Buildings.

- (a) Actions Required prior to Demolition. No person shall begin demolition until a City building permit for demolition has been secured; and all utilities have been cut off and capped at the street.
- (b) Actions Required by the Building Permit. Within the time specified in the building permit required hereinabove in Subsection (a), or the person who has secured such permit shall remove from the premises all debris, trash, litter, rubbish, rubble and foundation exposed above the ground level; fill any excavation or other depressions to existing grade with clean dirt containing no more than twenty-five (25%) per cent stone or masonry; and adequately slope and drain all filled areas.

Sec. 37. - Costs Constituting Lien on Property.

The amount of the cost of such vacating and closing or demolition at any time during the standing order by the director shall be a lien for such amount against the real property upon which such cost was incurred. Said lien shall attach to the real property upon the payment of all costs of vacating and closing or demolition by the city and the filing by the director of an itemized statement of the total sum of said cost in the applicable county lien docket.

Sec. 38. - Procedure for Collection of Amount Due on Lien.

The City Municipal Revenue Collector shall enforce the collection of any amount due on the lien in the following manner:

- (a) The owner and/or parties in interest shall be notified of the amount of the lien and shall be allowed to satisfy the amount due on such lien by paying to the Municipal Revenue Collector,

within thirty (30) days after the perfection of such lien, a sum of money equal to twenty-five per cent (25%) of the total due on such lien, and by further paying to said Municipal Revenue Collector the remaining balance due, together with interest at the rate of ten (10) per cent per annum, in three (3) equal annual payments, each of which shall become due and payable on the anniversary date of the initial payment made as hereinabove prescribed.

- (b) Should such property be sold, transferred or conveyed by the owner and/or parties in interest at any time prior to the termination of the said three (3) year period, the entire balance due on such lien, less unearned interest, shall be due and payable to the City Municipal Revenue Collector;
- (c) Should the amount due on such lien, or any portion thereof, be unpaid after it is due, or upon the occurrence of the situation provided for in Subsection (b) hereinabove, the City Municipal Revenue Collector may enforce the collection of any amount due on such lien in the same manner as provided in Georgia Laws O.C.G.A. 48-5-358 and other applicable statutes, all of which shall be subject to the right of redemption by any person having any right, title or interest in or lien upon said property; all as provided by Georgia Laws, O.C.G.A. 48-4-40.
- (d) The chief financial officer is hereby authorized to permit deferred or installment payments of assessments and liens by the persons owning such property associated with the cleaning and closing of private vacant structures, the demolition of private structures, and other actions taken by the City of Atlanta to secure private property against other than forcible entry when financial circumstances of all or certain of those persons invite relief. Determination of eligibility for the deferred or installment payments shall be in accordance with standards and guidelines set forth herein and subject to amendment by the council annually.
- (e) The chief financial officer is authorized to obtain a promissory note and to permit installment payments or annual payments according to the following schedule:

Fees up to \$1,000	not to exceed 2 years
\$1,001 to \$2,500	not to exceed 4 years
\$2,501 to \$5,000	not to exceed 6 years
\$5,001 or more	not to exceed 8 years

from property owners assessed for those services performed by the city who:

- (1) Submit proper proof in the form of an affidavit substantiated by a title report, that they are the owners of the property against which the assessment is made;
- (2) Submit proper proof in the form of an affidavit substantiating their inability to obtain other sources of financing in order to perform the services by private contract;
- (3) Agree to execute a promissory note in the principal sum of the assessment payable to the city according to the above schedule with interest of twelve percent (12%) per annum from the date of the note, or payable upon the sale or transfer of title of the property by the owner whichever first occurs;

- (4) Agree to execute a property security deed transferring the property to the City as security for the payment of the note; and
- (5) Agree to provide the City with a waiver of all judicial and quasi-judicial remedies normally available to owners under law.

Sec. 39. - Service of Notices and Orders.

Notices issued by the director pursuant to this article shall be served in the following manner:

- (1) At least 14 days prior to the date of the hearing, the director shall mail copies of the notice by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identities and addresses are reasonably ascertainable. Copies of the notice shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property within three business days of filing the complaint and at least 14 days prior to the date of the hearing.
- (2) For interested parties whose mailing address is unknown, a notice stating the date, time, and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in such county once a week for two consecutive weeks prior to the hearing.
- (3) A notice of lis pendens shall be filed in the office of the clerk of superior court in the county in which the dwelling, building, or structure is located at the time of filing the complaint before the in rem review board. Such notice shall have the same force and effect as other lis pendens notices provided by law.
- (4) Orders and other filings made subsequent to service of the initial notice shall be served in the manner provided in this article on any interested party who answers the complaint or appears at the hearing. Any interested party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

Sec. 40. - Eminent Domain.

Nothing in this Article shall be construed to prevent the owner of any property from receiving just compensation for the taking of such property by the power of eminent domain under the laws of the State of Georgia, or to permit any property to be condemned or destroyed except in accordance with the police power of this State.

APPENDIX D

ARTICLE V ATLANTA HOUSING CODE

(JUDICIAL IN REM CODE ENFORCEMENT)

Sec. 50. - Legislative finding.

It is found and declared that in the city there is the existence or occupancy of dwellings, buildings, or structures 1) which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and not in compliance with applicable codes; 2) which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; 3) which are vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed; and/or 4) which have other conditions 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 the City, and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.

Sec. 51. - Intent/purpose.

It is the intent of this article to authorize the department of planning and community development, acting through its respective bureaus, to exercise the power conferred by the General Assembly pursuant to O.C.G.A. § 41-2-8 through § 41-2-17 in order to seek the repair, closure, or demolition of dwellings, buildings, or structures meeting the standards herein identified/defined through an in rem enforcement action before the City of Atlanta Municipal Court.

Sec. 52. - Definitions.

As used in this article the term:

- (1) "Applicable codes" means (A) the Atlanta Housing Code of 1987, as amended; (B) any optional housing or abatement standard provided in O.C.G.A. § 8-2-1 et seq. 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; (C) any fire or life safety code as provided for in O.C.G.A. § 25-2-1 et. seq.; and (D) any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in O.C.G.A. § 8-2-1 et. seq. after October 1, 1991 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) "City" means the City of Atlanta.
- (3) "Closing" means causing a dwelling, building, or structure to be vacated and secured against unauthorized in accordance with Section 29 of this Appendix.
- (4) "Director" means the Director of the Bureau of Code Compliance and his designee(s).
- (5) "Drug crime" means an act which is a violation of the "Georgia Controlled Substances Act."
- (6) "Dwellings, buildings, or structures" means any building or structure or part thereof used and occupied for human habitation or commercial, industrial, or business uses, or intended to be

so used, and includes any outhouses, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design.

- (7) "Governing authority" means the Atlanta City Council.
- (8) "Interested parties" means:
 - (A) Owner;
 - (B) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;
 - (C) Those parties owning a security deed or mortgage and whose name and address appears either on the face of a properly recorded security deed or mortgage from the owner of the property or on the face of a properly recorded transfer of such a security deed or mortgage;
 - (D) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the Director or records maintained in the county courthouse or by the clerk of the court. Interested parties shall not include the holder of the benefit or burden of any easement or right-of-way whose interest is properly recorded which interest shall remain unaffected; and
 - (E) Persons in possession of said property and premises.
- (9) "Owner" means the holder of the title in fee simple and every mortgagee of record.
- (10) "Public authority" means any member of a governing authority, any housing authority officer, or any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, or building regulations or to other activities concerning dwellings, buildings, or structures in the municipality.
- (11) "Public officer" means the officer authorized by this Article and O.C.G.A. § 41-2-7 through § 41-2-17 to exercise the powers prescribed herein.
- (12) "Repair" means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes and 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.
- (13) "Resident" means any person residing in the City of Atlanta on or after the date on which the alleged nuisance arose.

Sec. 53. - Enforcement.

- (a) *Duty to maintain.* It is the duty of the owner of every dwelling, building, structure, or property within the city to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the city, 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 us of such codes or ordinances.
- (b) *Director's powers of enforcement.* The director is designated as the public officer authorized to exercise the powers prescribed by this article. The director is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this Article and of O.C.G.A. § 41-2-7 through O.C.G.A. § 41-2-17, including the following powers in addition to others granted in said sections:

- (1) To investigate the dwelling conditions in the city 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 article; and
 - (5) To delegate any of his functions and powers under the Article to such officers and agents as he may designate.
- (c) *Investigation.* Whenever it appears to the director or whenever a written request is filed with the director by a public authority or by at least five residents of the city 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 director shall make an investigation or inspection of the specific dwelling, building, structure, or property.
- (d) *Standards for determining unfitness for habitation.* The director may determine, under applicable codes, including, but not limited to, the Atlanta Housing Code, 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 the city. Such conditions may include the following (without limiting the generality of the foregoing):
- (1) Defects therein increasing the hazards of fire, accidents, or other calamities;
 - (2) Lack of adequate ventilation, light, or sanitary facilities;
 - (3) Dilapidation;
 - (4) Disrepair;
 - (5) Structural defects;
 - (6) Uncleanliness; and
 - (7) Highly hazardous conditions as specified in section 19 of this appendix.
- (e) *Vacant, dilapidated, and drug crimes.* The director may determine that a dwelling, building, or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.
- (f) *Prior citation.* Notwithstanding any provision of the Atlanta Housing Code to the contrary, the director may, but is not required to, issue citations for violations of this appendix and seek to enforce such citations in the City of Atlanta Municipal Court prior to issuing a complaint in rem as provided in this article.

Sec. 54. - Judicial proceedings.

- (a) *Complaint.* If the director'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 director 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 interested parties for such dwelling, building, or structure. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the interested parties; state with particularity the factual basis for the action; and contain a statement of the action sought by the director to abate the alleged nuisance.
- (b) *Summons.* The summons shall notify the interested parties that a hearing will be held before the City of Atlanta Municipal Court, at a date and time certain. Such hearing shall be held not less than 15 days nor more than 45 days after the filing of said complaint in the City of Atlanta Municipal Court. The interested parties 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 the hearing.
- (c) *Service of complaints and orders.* Complaints issued by the director pursuant to this article shall be served in the following manner:
- (1) At least 14 days prior to the date of the hearing, the director shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identities and addresses are reasonably ascertainable. Copies of the complaint shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property within three business days of filing the complaint and at least 14 days prior to the date of the hearing.
 - (2) For interested parties whose mailing address is unknown, a notice stating the date, time, and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in such county once a week for two consecutive weeks prior to the hearing.
 - (3) A notice of lis pendens shall be filed in the office of the clerk of superior court in the county in which the dwelling, building, or structure is located at the time of filing the complaint in the City of Atlanta Municipal Court. Such notice shall have the same force and effect as other lis pendens notices provided by law.
 - (4) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this article on any interested party who answers the complaint or appears at the hearing. Any interested party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.
- (d) *Hearing and order.* 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 interested parties that have answered the complaint or appeared at the hearing an order:
- (1) 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

- (2) 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.
- (e) *Reasonable cost.* For purposes of this article, 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 O.C.G.A. § 43-39A-1 et seq., 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.

Sec. 55. - Failure to comply.

- (a) If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure within the time specified in the order, the director may cause such dwelling, building, or structure to be repaired, altered, or improved or to be vacated and closed or demolished. Such abatement action shall commence within 270 days after the expiration of time specified in the order for abatement by the owner. Any time during which such action is prohibited by a court order issued pursuant to O.C.G.A. § 41-2-13 or any other equitable relief granted by a court of competent jurisdiction shall not be counted toward the 270 days in which such abatement action must commence.
- (b) The director 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."
- (c) If the director 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 director 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.

Sec. 56. - Lien.

- (a) *Calculation of lien.* The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the county tax commissioner or municipal tax collector or city revenue officer, 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.

- (b) *Certified copy of order.* The 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 the county where the real property is located and shall relate back to the date of the filing of the lis pendens notice provided for in this article. 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.
- (c) *Statement of amount due.* Upon final determination of costs, fees, and expenses incurred in accordance with this chapter, the director shall transmit to the appropriate county tax commissioner or municipal tax collector or city revenue officer a statement of the total amount due and secured by said lien, together with copies of all notices provided to interested parties. The statement of the director shall be transmitted within 90 days of completion of the repairs, demolition, or closure.
- (d) *Duty to collect.* It shall be the duty of the appropriate county tax commissioner or municipal tax collector or city revenue officer, who is responsible or whose duties include the collection of municipal taxes, to collect the amount of the lien using all methods available for collecting real property ad valorem taxes, including specifically Chapter 4 of Title 48 of the Official Code of Georgia Annotated; 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.
- (e) *Remit of amount collected.* A county tax commissioner shall collect and enforce a City lien imposed pursuant to this Article in accordance with O.C.G.A. § 48-5-359.1. The county tax commissioner or municipal tax collector or city revenue officer shall remit the amount collected to the city's department of finance. All amounts remitted from the enforcement of the lien shall be deposited into a special account for the enforcement of the provisions of this article.
- (f) *Enforcement.* Enforcement of liens pursuant to this article may be initiated at any time following receipt by the county tax commissioner or municipal tax collector or city revenue officer of the final determination of costs in accordance with this article. The unpaid lien amount shall bear interest and penalties from and after the date of final determination of costs in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes. An enforcement proceeding pursuant to O.C.G.A. § 48-4-78 for delinquent ad valorem taxes may include all amounts due under this Article.
- (g) *Redemption.* The redemption amount in any enforcement proceeding pursuant to this article shall be the full amount of the costs as finally determined in accordance with this article together with interest, penalties, and costs incurred by the city, county tax commissioner, municipal tax collector, or city revenue officer in the enforcement of such lien. Redemption of property from the lien may be made in accordance with the provisions of O.C.G.A. § 48-4-80 and O.C.G.A. §48-4-81.
- (h) *Lien waiver and release.* The city council may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the city 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.
- (i) *Appropriations; grants; donations.* The city is authorized to make such appropriations from its revenues as it may deem necessary and may accept and apply grants or donations to assist it in carrying out the provisions of this article.

Sec. 57. - General provisions.

- (a) *Appeal.* Review of a municipal 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.
- (b) *Injunction.* Any person affected by an order issued by the director may petition to the superior court for an injunction restraining him from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the director 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 director. 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 Code section.
- (c) *Compensation for property.* Nothing in this article shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of such property by the power of eminent domain under the laws of this state nor as permitting any property to be condemned or destroyed except in accordance with the police power of this state.
- (d) *Powers supplemental to other laws.* Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its local enabling act, its charter, or its ordinances or regulations nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by any other law, including but not limited to Article III of this appendix.
- (e) *Summary proceedings.* Nothing in this article shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Secs. 58, 59. - Reserved.

APPENDIX E

OFFICIAL CODE OF GEORGIA ANN. § 41-2-9

(SUPER-PRIORITY CODE LIEN STATUTE)

(a) In addition to any other remedies or enforcement mechanisms available, upon the adoption of an ordinance finding that dwelling, building, or structure conditions of the character described in Code Section 41-2-7 exist within a county or municipality, the governing body of such county or municipality is authorized to adopt ordinances relating to the dwellings, buildings, or structures within such county or municipality 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. Such ordinances shall include at least the following provisions:

(1) That 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) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances;

(3) That whenever a request is filed with the public officer by a public authority or by at least five residents of the municipality or by 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; 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 interested parties for such dwelling, building, or structure. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the interested parties; 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 interested parties that a hearing will be held before a court of competent jurisdiction as determined by Code Section 41-2-5, at a date and time certain and at a place within the county or 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 interested parties 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) That 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 interested parties 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 Code section, 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 factor¹ 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) That, 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. Such abatement action shall commence within 270 days after the expiration of time specified in the order for abatement by the owner. Any time during which such action is prohibited by a court order issued pursuant to Code Section 41-2-13 or any other equitable relief granted by a court of competent jurisdiction shall not be counted toward the 270 days in which such abatement action must commence. 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) That the amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the county tax commissioner or municipal tax collector or city revenue officer, 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.

(b)(1) The lien provided for in paragraph (7) of subsection (a) of this Code section 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 (c) of Code Section 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.

(2) Upon final determination of costs, fees, and expenses incurred in accordance with this chapter, the public officer responsible for enforcement actions in accordance with this chapter shall transmit to the appropriate county tax commissioner or municipal tax collector or city revenue officer a statement of the total amount due and secured by said lien, together with copies of all notices provided to interested parties. The statement of the public officer shall be transmitted within 90 days of completion of the repairs, demolition, or closure. It shall be the duty of the appropriate county tax commissioner or municipal tax collector or city revenue officer, who is responsible or whose duties include the collection of municipal taxes, to collect the amount of the lien 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. A county tax commissioner shall collect and enforce municipal liens imposed pursuant to this chapter in accordance with Code Section 48-5-359.1. The county tax commissioner or municipal tax collector or city revenue officer shall remit the amount collected to the governing authority of the county or municipality whose lien is being collected.

(3) Enforcement of liens pursuant to this Code section may be initiated at any time following receipt by the county tax commissioner or municipal tax collector or city revenue officer of the final determination of costs in accordance with this chapter. The unpaid lien amount shall bear interest and penalties from and after the date of final determination of costs in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes. An enforcement proceeding pursuant to Code Section 48-4-78 for delinquent ad valorem taxes may include all amounts due under this chapter.

(4) The redemption amount in any enforcement proceeding pursuant to this Code section shall be the full amount of the costs as finally determined in accordance with this Code section together with interest, penalties, and costs incurred by the governing authority, county tax commissioner, municipal tax collector, or city revenue officer in the enforcement of such lien. Redemption of property from the lien may be made in accordance with the provisions of Code Sections 48-4-80 and 48-4-81.

(c) 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 county or 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.

(d) Where the abatement action does not commence in the superior court, 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 Code Section 5-3-29.

(e) In addition to the procedures and remedies in this chapter, a governing authority may provide by ordinance that designated public officers may issue citations for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance, and conditions creating a public health hazard or general nuisance, and seek to enforce such citations in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this Code section.

(f) Nothing in this Code section shall be construed to impair or limit in any way the power of the county or municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

APPENDIX F

OFFICIAL CODE OF GEORGIA ANN. § 48-4-75 ET SEQ.

(JUDICIAL IN REM TAX SALE STATUTE)

48-4-75 Legislative Intent.

The General Assembly finds that the nonpayment of ad valorem taxes by property owners effectively shifts a greater tax burden to property owners willing and able to pay their share of such taxes, that the failure to pay ad valorem taxes creates a significant barrier to neighborhood and urban revitalization, that significant tax delinquency creates barriers to marketability of the property, and that nonjudicial tax foreclosure procedures are inefficient, lengthy, and commonly result in title to real property which is neither marketable nor insurable. In addition, the General Assembly finds that tax delinquency in many instances results in properties which present health and safety hazards to the public. Consequently, the General Assembly further finds that the alternative to nonjudicial tax foreclosure procedures authorized by this article is an effective means of eliminating health and safety hazards by putting certain tax delinquent properties back on the tax rolls and into productive use.

48-4-76 The Nature of Rights and Remedies.

(a) In addition to any other rights and remedies provided under state law for the enforcement of tax liens by the State of Georgia and its counties and municipalities, such governmental entities may proceed with judicial in rem tax foreclosures for delinquent taxes in accordance with the provisions of this article by enactment of an ordinance or resolution of the governing authority of the county in which the property is located which ordinance or resolution shall be sufficient authority for use of the provisions of this article by such county and all municipalities within such county as to their respective taxes. In the event that the governing authority of a county does not so act, a municipality located in such county may, by enactment of its own ordinance or resolution, authorize the use of judicial in rem tax foreclosures for delinquent municipal taxes in accordance with the provision of this article. Any such ordinance or resolution may set forth criteria for selection of properties to be subject to the provisions of this article.

(b) Proceedings in accordance with this article are designed solely to enforce the lien for ad valorem taxes against the property subject to such taxation and shall not constitute an action for personal liability for such taxes of the owner or owners of such property.

(c) The rights and remedies set forth in this article are available solely to the governmental entities authorized by law to collect ad valorem taxes and shall not extend to any transferee of tax executions or tax liens.

(d) The enforcement proceedings authorized by this article may be initiated by a county, by a municipality, by one acting on behalf of the other pursuant to contract, or by joint action in a single proceeding.

48-4-77. Definitions.

As used in this article, the term:

(1) "Interested party" means:

(A) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;

(B) Those parties having filed a notice in accordance with Code Section 48-3-9; and

(C) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner or records maintained in the county courthouse or by the clerk of the court. "Interested party" shall not include the holder of the benefit or burden of any easement or right of way whose interest is properly recorded which interest shall remain unaffected.

(2) "Redemption amount" means the full amount of the delinquent ad valorem taxes, accrued interest at the rate specified in Code Section 48-2-40, penalties determined in accordance with Code Section 48-2-44, and costs incurred by the governmental entity in collecting such taxes including without limitation the cost of title examination and publication of notices.

48-4-78. Filing of petition for tax foreclosure; form of petition; notice.

(a) After an ad valorem tax lien, based upon a digest approved in accordance with the law, has become payable and is past due and thereby delinquent, a tax commissioner or other tax collector, as appropriate, may identify those properties on which to commence a tax foreclosure in accordance with this article. The tax commissioner or other tax collector, as appropriate, shall not commence tax foreclosure in accordance with this article for a period of 12 months following the date upon which the taxes initially became delinquent. Once enforcement proceedings have commenced in accordance with the provisions of this article, the enforcement proceedings may be amended to include any and all ad valorem taxes which become delinquent subsequent to the date of the initial ad valorem tax lien that was the original basis for the enforcement proceedings.

(b) The tax commissioner or other tax collector, as appropriate, shall file a petition with the superior court of the county in which the property is located, which petition shall have form and content substantially identical to that form as provided in subsection (g) of this Code section. When the subject property is located in more than one taxing jurisdiction, the entity filing the petition shall identify in the petition only those portions of such property lying within the jurisdiction of the taxing authority of the petitioner.

(c) The petition shall be filed against the property for which taxes are delinquent and shall provide:

- (1) The identity of the petitioner and the name and address of the individual responsible for collecting the delinquent taxes;
- (2) The property address;
- (3) A description of the property;
- (4) The tax identification number of the property;
- (5) The calendar year or years for which the taxes are delinquent;
- (6) The principal amount of the delinquent taxes together with interest and penalties; and
- (7) The names and addresses of parties to whom copies of the petition are to be sent in accordance with subsection (d) of this Code section.

(d) The petitioner shall mail copies of the petition by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the petition shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property.

(e) Simultaneous with the filing of the petition, the petitioner shall cause notice of the petition to be filed in the appropriate lis pendens docket in the county in which the property is located.

(f) Within 30 days of the filing of the petition, the petitioner shall cause a notice of the filing of the petition to be published on two separate dates in the official organ of the county in which the property is located. Such notice shall specify:

- (1) The identity of the petitioner and the name and address of the individual responsible for collecting the delinquent taxes;
- (2) The property address;
- (3) A description of the property;
- (4) The tax identification number of the property;
- (5) The applicable period of tax delinquency;
- (6) The principal amount of the delinquent taxes together with interest and penalties; and
- (7) The date and place of the filing of the petition.

(g) The petition for ad valorem tax foreclosure shall be written or printed, or written in part and printed in part, and shall be in substantially the following form:

--SUPERIOR COURT OF _____ COUNTY--
--STATE OF GEORGIA--

Petitioner:)

TAX COMMISSIONER/TAX COLLECTOR)

_____)

_____)

_____)

(Name, Address,)

Telephone Number))

v.)

Respondents:) Case No.:.....

_____ ACRES OF LAND LYING)

AND BEING IN LAND LOT)

_____, DISTRICT _____,)

_____ COUNTY, GEORGIA;)

AND _____)

_____)

(Insert name and mailing address of owner of property.))

--PETITION FOR AD VALOREM TAX FORECLOSURE--

COMES NOW (Petitioner) and petitions this Court for an in rem tax foreclosure by showing this Court as follows:

1.

_____ is the owner of certain real property located at _____ (the "Property") having a tax identification number of _____. (A legal description of the Property is attached hereto as Exhibit "A" and by this reference incorporated herein).

2.

The ad valorem taxes assessed against the Property by City/County of _____ for the year(s) _____ in the amount of \$ _____ (amount includes principal amount of taxes owed and any accrued interest and penalties as of this date) have not been paid.

3.

Attached hereto as Exhibit "B" is a list of the names and addresses of Interested Parties also receiving a copy of this Petition by certified mail or statutory overnight delivery, return receipt requested.

4.

_____ and _____ as occupants of the respondent Property shall be served by mailing the petition by first-class mail to the attention of the occupants at the above-listed Property address.

5.

The Petition has also been posted on the Property in accordance with Code Section 48-4-78 of the Official Code of Georgia Annotated.

6.

Simultaneously with the filing of this Petition, Petitioner has filed a lis pendens.

WHEREFORE, Petitioner demands (1) a hearing in the Superior Court of _____ County (the "Court") and (2) a judgment by the Court stating that (a) the taxes for the Property are delinquent and (b) that Notice has been given to all Interested Parties, and ordering that the Property may be sold at public outcry pursuant to Code Section _____ of the Official Code of Georgia Annotated.

TAX COMMISSIONER/TAX COLLECTOR

City/County of

By:

Its:

--NOTICE TO RESPONDENTS AND ALL INTERESTED PARTIES--

This Petition serves as notice to the Respondents and all Interested Parties that (1) each party is presumed to own or have a legal interest in the Property, (2) that foreclosure proceedings have been commenced because of the failure to pay the real property taxes cited above, and (3) foreclosure will result in the loss of ownership of the Property and all rights or interests of all Interested Parties.

To avoid loss of ownership or any interest in the Property, payment of the full amount of taxes, penalties, interest, and costs must be paid to the _____ office located at _____ by _____ date. Respondents and all Interested Parties are also reminded that each of you may wish to contact an attorney to protect your rights.

A Hearing on the above matter shall take place in the Superior Court of _____ County no earlier than 30 days after the filing of this Petition. To determine the exact time and date of such hearing, please call Clerk of Superior Court of _____ County.

This _____ day of _____, _____.

Deputy Clerk

Superior Court of

**--EXHIBIT A--
--Description of the Property--**

.....
.....
.....

Together with all rights, title, and interest running with the above-described property but not taxed under a separate tax reference number as delineated on the tax maps of the petitioner for the year(s) for the taxes being foreclosed.

**--EXHIBIT B--
--Names and Addresses of Interested Parties--**

.....
.....
.....

48-4-79. Judicial hearing

(a) The petitioner shall request that a judicial hearing on the petition occur not earlier than 30 days following the filing of the petition. At such hearing any interested party shall have the right to be heard and to contest the delinquency of the taxes or the adequacy of the proceedings. If the superior court determines that the information set forth in the petition is accurate, the court shall render its judgment and order that:

- (1) The taxes are delinquent;
- (2) Proper notice has been given to all interested parties
- (3) The property as described in the petition be sold in accordance with the provisions of this article; and
- (4) The sale shall become final and binding 60 days after the date of the sale in accordance with Code Section 48-4-81.

(b) The order of the superior court shall provide that the property be sold free and clear of all liens, claims, and encumbrances other than:

- (1) Rights of redemption provided under federal law;
- (2) Tax liens held by Georgia governmental entities other than the petitioner which are superior to



the taxes identified in the petition by virtue of the provisions of subsection (b) of Code Section 48-2-56;

(3) Easements and rights of way of holders who are not interested parties under subparagraph (C) of paragraph (1) of Code Section 48-4-77; and

(4) Benefits or burdens of any real covenants filed of record as of the date of filing of the petition

(c) If, upon production of evidence to the court by any party, it is determined by the court that any interested party died within the six-month period of time immediately preceding the filing of the petition, the court may postpone the hearing, for a period of up to six months, to allow the administrator or executor of the estate adequate time to close the estate.

48-4-80. Redemption of property prior to sale by payment of redemption amount

(a) At any point prior to the moment of the sale, any interested party may redeem the property from the sale by payment of the redemption amount. Payment shall be made to the petitioner. Following receipt of such payment, the petitioner shall file for dismissal of the proceedings.

(b) In the event of such payment by the owner of the subject property, the proceedings shall be dismissed and the rights and interests of all interested parties shall remain unaffected.

(c) In the event of such payment by any interested party other than the owner, the party accomplishing such payment shall possess a lien on the property for the full amount of such payment, which lien shall have the same priority as the lien for the delinquent taxes. Such lienholder shall have the right to enforce such lien as permitted to the holder of any lien under existing law. Such lienholder shall not otherwise succeed to the rights of the petitioner as described in this article.

48-4-81. Foreclosure sale; right of redemption; form of tax deed

(a) Following the hearing and order of the superior court in accordance with Code Section 48-4-79, a sale of the property shall be advertised and conducted on the date, time, place, and manner which are required by law of sheriffs' sales. Such sale shall not occur earlier than 45 days following the date of issuance of such order of the superior court.

(b) Except as otherwise authorized by law, the minimum bid price for the sale of the property shall be the redemption amount. In the absence of any higher bid, the petitioner may, but shall not be obligated to, tender its own bid in an amount equal to the minimum bid price and thereby become the purchaser at the sale.

(c) From and after the moment of the sale, the sale shall be final and binding, subject only to the right of the owner of the property to redeem the property from the sale upon payment into the superior court of the full amount of the minimum bid price of the sale. Such right of redemption of the owner shall exist for a period of 60 days from and after the date of the sale and shall be in accordance with the following provisions:

(1) Redemption by an owner in accordance with this subsection shall result in a dismissal of the proceedings. Immediately following such redemption by an owner, if the property was sold to a third party at the sale, the petitioner shall refund to such purchaser the full amount paid by such purchaser at the sale;

(2) For purposes of redemption under this subsection, "owner" shall mean the owner of record of fee simple interest in the property as of the date of filing of the petition, together with such owner's

successors-in-interest by death or operation of law. This right of redemption shall not otherwise be transferable; and

(3) This right of redemption shall automatically terminate and expire upon failure to redeem in accordance with the provisions of this subsection within the 60 day period following the date of the sale.

(d) If the property is not redeemed by the owner in accordance with subsection (c) of this Code section, then within 90 days following the date of the sale, the petitioner shall cause to be executed on behalf of the petitioner and delivered to the foreclosure sale purchaser a deed for the property in substantially the form set forth in subsection (g) of this Code section, together with such real estate transfer tax declaration forms as may be required by law.

(e) Within 90 days following the date of the sale, the petitioner shall file a report of the sale with the superior court, which report shall identify whether a sale took place, the foreclosure sale price, and the identity of the purchaser.

(f) In the event that the foreclosure sale price exceeds the minimum bid amount at the foreclosure sale, the petitioner shall deposit into the registry of the superior court the amount of such surplus. Such surplus shall be distributed by the superior court to the interested parties, including the owner, as their interests appear and in the order of priority in which their interests exist.

(g) The form of the deed provided for in subsection (d) of this Code section shall be substantially as follows:

When recorded, please

CROSS-REFERENCE:

return to:

Deed Book _____, page _____,

_____ County, Georgia Records

STATE OF GEORGIA

COUNTY OF _____

--TAX DEED--

This indenture (the "Deed") made this _____ day of _____, _____, by and between _____, a _____

("Grantor") and _____, a _____ ("Grantee").

--WITNESSETH--

WHEREAS, on the _____ day of _____, _____, during the legal hours of sale, Grantor did expose for sale at public outcry to the highest bidder for cash before the courthouse door in _____ County, Georgia, the Property (as hereinafter defined) at which sale Grantee was the highest and best bidder for the sum of \$_____ and the Property was then and there knocked off to Grantee for said sum. The sale was made by Grantor pursuant to and by virtue of the power and authority granted to it in that certain Order granted _____, _____, Case No. _____, Superior Court of _____ County, Georgia (the "Order"). Said sale was made after advertising the time, place, and terms thereof in the _____, published in _____, Georgia, in the aforesaid county, and being the publication in which Sheriff's advertisements for said county are now published, once a week for four consecutive weeks prior to said sale on the _____, _____, _____, and _____ of _____, _____, and said advertisement in all respects complied with the requirements of Code Section _____ of the Official Code of Georgia Annotated. Notice of the time, place, and terms of the sale of the Property was given pursuant to Code Section _____ of the Official Code of Georgia Annotated. Said sale was made for the purpose of paying the ad valorem taxes owed to _____, the interest and penalties on said indebtedness, the expenses of the sale including attorneys' fees, all of which were mature and payable because of failure of the owner to pay the ad valorem taxes owed.

NOW, THEREFORE, Grantor, acting under and by virtue of the Order and pursuant to Code Section _____ of the Official Code of Georgia Annotated, for and in consideration of the facts hereinbefore recited, has bargained, sold, and conveyed and does hereby bargain, sell, and convey unto Grantee, its successors and assigns, the following described property (herein referred to as the "Property"); to wit:

All that tract or parcel of land lying and being in Land Lot _____ of the _____ District, _____ County, Georgia, and being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

This Deed is given subject to all restrictions and easements, if any, to which the Deed is junior and inferior in terms of priority, and any and all tax liens which pursuant to subsection (b) of Code Section 48-2-56 of the Official Code of Georgia Annotated are superior to the rights conveyed herein relating to the Property.

TO HAVE AND TO HOLD, the Property unto Grantee, its successors and assigns in fee simple.

IN WITNESS WHEREOF, Grantor, has caused its duly authorized officer to sign and seal this Deed as of the day and year first above written.

.....

Signed, sealed, and

delivered in the

presence of:

Unofficial Witness

By: _____ (SEAL)

Its:

Notary Public

Commission Data:

(NOTARIAL SEAL)

--EXHIBIT A--
--Description of the Property--

Together with all right, title, and interest running with the above-described property but not taxed under a separate tax reference number as delineated on the tax maps of the petitioner for the year(s) for the taxes being foreclosed.