

ARTICLE III. - NUISANCES (DRAFT)

State Law reference— Nuisances, O.C.G.A. § 41-1-1 et seq.; jurisdiction of municipal court or magistrate court to abate nuisances, O.C.G.A. § 41-2-5.

Sec. 38-40. - Intent.

It is declared to be the intent of the board of commissioners, in furtherance of its governmental interest in and responsibility to protect the public health, safety and welfare of the citizens of the county, to enact the regulations in this article governing the maintenance of property and the removal of hazards there from, all in order to assure the prevention and abatement of nuisances.

(Ord. No. xxxxxxx)

Sec. 38-41. - Definitions.

Except as specifically defined in this section, all words used in this article shall have their customary dictionary definitions. For the purposes of this article, the following terms shall be defined as provided for herein:

Agricultural Equipment means equipment such as tractors, combine or harvesters, plows, spreaders, seeders, fertilizers, and balers, used for farming or agricultural purposes.

Ashes means the residue from the burning of wood, coal or other combustible material.

Building Materials means wood, windows, siding, metal, shingles/roofing materials, insulation, bricks, concrete, rock and other construction materials.

Building Rubbish means used and discarded building materials.

Developed property means property upon which a structure has been erected which requires permanent location on the ground or which is attached to something having permanent location on the ground.

Garbage means household waste.

Household Appliances means any household or kitchen appliances that have been abandoned or are not being put to the use for which they were intended, including, but not limited to, refrigerators, freezers, clothes washers and dryers, dishwashers, bathtubs, water heaters, toilets, air conditioning or heating units, stoves, ovens, microwave ovens, and other similar such appliances.

Inoperable vehicle means any vehicle that is resting on blocks, without tires, with major parts missing, in a state of repair which precludes use, or lacking a current valid state tag.

Litter means any kind of discarded and uncontrolled or uncontained garbage and/or trash, that may be carried or deposited, in whole or in part, by wind, rain, snow, water, animal or any other such force into any public or private property, or into any river, public waterway, drain, sewer or receiving basin.

Open storage means the storage of personal property, including but not limited to vehicles, that is not screened on all sides from view by a building, fence, landscaping or other visual buffer from any public way or adjoining property.

Person means firms, partnerships, associations, organizations, trusts, companies and bodies politic and corporate, or any other group of individual acting as a unit, or any combination thereof, as well as individuals.

Public Officer means the officer, or any agent of such officer, who is authorized by O.C.G.A. § 41-2-1 et seq. to exercise the powers prescribed by this article.

Private property means property privately owned by one or more persons.

Public property means any road, street, alley, sidewalk or other public thoroughfare in unincorporated White County or property owned and controlled by any governmental entity.

Road means the entire width between boundary lines of every right-of-way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular or pedestrian travel.

Trash means any waste items Trash includes, but is not limited to, paper, cardboard, cans yard clippings, glass, crockery and larger items including but not limited to mattresses, broken furniture, broken tools and other similar items or materials. .

Vegetation means grass, weeds, or plants having no permanent woody stem less than one inch in diameter at breast height and showing no visible signs of having been maintained, as distinguished from a tree or shrub.

(Ord. No. xxxxx)

Sec. 38-42. - Penalty for violation.

In addition to any other remedy or right of abatement provided in this article, the county Code and laws, or general law, any person found to be in violation of this article shall be subject to the penalties as described in section 1-19 of this Code.

(Ord. No. 2004-06(1), § I, 6-15-2004)

Sec. 38-43. - Unlawful acts and conditions.

- (a) Any condition caused or permitted to exist in violation of any of the provisions of the county Code and laws are deemed a public nuisance and declared unlawful as such.
- (b) By way of illustration only and without limiting the scope of subsection (a) of this section, the following acts and/or conditions are declared public nuisances and unlawful:
 - (1) It shall be unlawful for the owner or occupant of a building, structure, or property to utilize the premises of such property for the open storage of any inoperable motor vehicle, ice box, refrigerator, stove, glass, building material, building rubbish or similar items. It shall be the duty and responsibility of every such owner or occupant to keep the premises of such property clean and to remove from the premises all such abandoned items as listed above, including, but not limited to, weeds, dead trees, trash, garbage, etc., upon notice from the building official.

- (2) Allowing a fire-damaged house, trailer, building, structure, or vehicle to remain on the property without any mitigation for more than 120 days after the fire.
- (c) For purposes of this section, either the owner of the real property upon which a condition prohibited by this article exists or the lawful possessor in control of said real property, or both, may be held liable for violation of this section. Provided, however, that the owner of the real property upon which a public nuisance exists shall not be liable for the violation of this section by a lawful possessor in control of said real property until said owner has been notified of the existence of the nuisance. Once notified of the existence of the nuisance, the owner may be held liable to the same extent of the lawful possessor of the property unless said owner establishes by a preponderance of the evidence:
 - (1) That they neither caused nor contributed in any manner to the existence of the nuisance;
 - (2) That they have no legal authority to control the actions of the lawful possessor or to remove the lawful possessor from possession upon being notified of the existence of the nuisance.
- (d) Nothing in this article shall be deemed to prevent the use and outside storage of operational agricultural equipment.

(Ord. No. xxxx)

Sec. 38-44. - Abatement.

- (a) All nuisances and dangerous objects in and about county roads, streets and other public places may be removed at once by the county, without any notice, and the expense incurred in the removal shall be paid by the owner of the dangerous objects or of the person maintaining the nuisance.
- (b) It shall be unlawful for the person creating or maintaining any nuisance within the unincorporated areas of the county to fail or refuse to abate and remove same after having been ordered to do so in accordance with the provisions of the Code and laws of the county.
- (c) Any nuisance on private property in the unincorporated areas of the county may be removed on the written complaint of any officer or inhabitant of the county, which complaint must set forth particularly the nature and location of same and the person complained against. On such complaint being filed with the county magistrate court, the court shall issue a summons to the person charged with maintaining such nuisance, requiring him to show cause before the court at some time therein specified, within not more than ten days after service is perfected, unless said time period should be extended to allow for service by publication, why said nuisance complained of should not be abated. Such notice shall be served personally by a Code Enforcement officer or Deputy Sheriff at least one day before the hearing. At the trial, the court shall hear evidence as to the facts and pass an order as may be just. If the thing complained of is a nuisance, the order shall specify within what time it is to be abated by the defendant. If it is not abated within the time specified in the order, the court shall issue a writ directed to the County Manager directing and requiring the abatement of the nuisance.
- (d) Whenever the person creating or maintaining any nuisance within the unincorporated areas of the county shall fail to abate after notice to do so, and it shall become necessary to issue

a writ, directed to the County Manager, requiring him to remove same, it shall be the duty of the County Manager to keep an account of the necessary expenses incurred and to render to the court a statement of same. The court shall issue an execution against such order for such amount, the same to be levied upon and collected in any manner allowed by law, including but not limited to the manner as is provided for the levy in collection of executions for taxes.

(Ord. No. xxxxxxxx)

Sec. 38-44.1. - Service of complaints.

- (a) Complaints filed pursuant to this article shall be served in the following manner. In all cases, a copy of the complaint and summons shall be conspicuously posted on the subject dwelling, building, or structure, if any, within three business days of filing of the complaint and at least 15 days prior to the date of the hearing. A copy of the complaint and summons shall be served in one of the following ways:
 - (1) Personal service upon each owner and party in interest if such parties are residents of the county. Service shall be perfected at least 15 days prior to the date of the hearing. Service may be made by the public officer designated by ordinance to abate nuisances or by any law enforcement officer of the county or municipality whose ordinance is being enforced; and a return of service, filed with the clerk of the appropriate court, shall be deemed sufficient proof that service was perfected;
 - (2) Pursuant to the provisions of O.C.G.A. § 48-4-75 et seq.; or
 - (3) Statutory overnight delivery.
- (b) If any owner or party in interest is a resident of this state but resides outside of the county, service shall be perfected by certified mail or statutory overnight delivery, return receipt requested, to the most recent address shown in county tax filings and mailed at least 15 days prior to the date of the hearing.
- (c) Nonresidents of this state, whose mailing address is known, shall be served by certified mail or statutory overnight delivery, return receipt requested, mailed at least 15 prior to the date of the hearing. For nonresidents 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.
- (d) In the event either the owner or any party in interest is a minor, an estate, an incompetent person, or person laboring under disabilities, the guardian or other personal representative of such person shall be served and if such guardian or personal representative resides outside the county or is a nonresident of this state, he shall be served as provided for in subsection (c) of this section. If such owner or party in interest has no guardian or personal representative, service shall be perfected by serving the judge of the probate court of the county wherein such property is located at least fifteen days prior to the date of the hearing which judge shall stand in the place of and protect the rights of such minor, estate, or incompetent person or appoint a guardian ad litem for such person.
- (e) In the event of unknown persons or unborn persons who are likely to have any rights in the property or interest or the proceeds thereof, the judge of the probate court of the county wherein such property or interest is located shall be personally served at least 15 days prior

to the date of the hearing, and it shall be the duty of the judge of the probate court to stand in the place of and protect the rights of such unknown parties or unborn remaindermen.

- (f) In the event the whereabouts of any owner or party in interest is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence or if any owner or party in interest cannot, after due diligence, be served as provided in this section, the public officer shall make an affidavit to that effect and serve by publication in the manner provided in subsection (c) of this section, and such publication shall be sufficient proof that service was perfected.
- (g) 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 appropriate court. Such notice shall have the same force and effect as other lis pendens notices provided by law.
- (h) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this section on the owner and any party in interest who answers the complaint or appears at the hearing. Any party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

(Ord. No. xxxxxxxx)

Sec. 38-45. - Findings of the existence of nuisances.

- (a) The board of commissioners finds and declares that within the unincorporated areas of the county there is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and not in compliance with the applicable state construction codes as adopted by ordinance or operation of law or any optional building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance in the county; or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of this state; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.
- (b) It is further found and declared that in the unincorporated areas of the county, where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of the county and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent real estate unsafe or inimical to safe human habitation. The board of commissioners finds that there exist in the unincorporated areas of the county dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and not in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or where other conditions exist rendering such dwellings, buildings, or structures unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the county, or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed, and private property exists constituting an endangerment to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the property.

- (c) If unfit dwellings are identified as nuisances, they will be processed in accordance with the Unfit Dwelling portion of White County Code being Chapter 14, Article IV, Sec. 14-141 to Sec. 14-153.
- (d) It is the intention of the board of commissioners that this section shall comply with O.C.G.A. § 41-2-9(a) as a finding that conditions as set out in O.C.G.A. § 41-2-7 exist within the unincorporated areas of the county.

(Ord. No. xxxxxxxx)

Sec. 38-46. - Enforcement powers of public officer.

In the enforcement of this division, the public officer shall be authorized:

- (1) To investigate the dwelling conditions in the municipality in order to determine which dwellings, buildings, or structures therein are unfit for human habitation or are unfit for current commercial, industrial, or business use or are vacant, dilapidated, and being used in connection with the commission of drug crimes;
- (2) To administer oaths and affirmations, to examine witnesses, and to receive evidence;
- (3) To enter upon premises for the purpose of making examinations; provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to carry out the purposes of this division; and
- (5) To delegate any of his functions and powers under this division to such officers and agents as he may designate.
- (6) Shall cross reference properties with Appendix C Land Use of White County Code and the official land use map to ensure that current usage of properties are not a permitted use.

(Ord. No. xxxxxx)

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