

AN ORDINANCE

BY COUNCILMEMBERS DUSTIN HILLIS, JASON DOZIER, MATT WESTMORELAND, JASON WINSTON, MARY NORWOOD, HOWARD SHOOK, LILIANA BAKHTIARI, ALEX WAN, BYRON D. AMOS, ANTONIO LEWIS, ANDREA L. BOONE, AMIR FAROKHI, KEISHA SEAN WAITES AND MICHAEL JULIAN BOND

AS SUBSTITUTED BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AN ORDINANCE TO AMEND CHAPTER 74, ARTICLE V, SECTION 74-175 OF THE CITY OF ATLANTA CODE OF ORDINANCES TO AUTHORIZE THE MUNICIPAL COURT TO ORDER THE ABATEMENT OF A PUBLIC NUISANCE ESTABLISHED AS A RESULT OF VIOLENT CONDUCT OR CRIME OCCURRING WITH CERTAIN PROPERTIES THROUGH THE IMMEDIATE CLOSURE OF SUCH PROPERTIES; TO REQUIRE THE MUNICIPAL COURT TO ORDER THE ABATEMENT OF SUCH A PUBLIC NUISANCE THROUGH THE IMMEDIATE CLOSURE OF SUCH PROPERTIES WHERE THE MUNICIPAL COURT HAS DETERMINED SUCH A PUBLIC NUISANCE TO HAVE OCCURRED TWICE REGARDING THE SAME PROPERTY WITHIN TWENTY-FOUR MONTHS; AND FOR OTHER PURPOSES. ► (HELD 5/9/22 FOR A WORK SESSION)

WHEREAS, the City of Atlanta has an interest in maintaining the public health, safety and welfare of the citizens of the City of Atlanta and its visitors; and

WHEREAS, the specific properties that repeatedly contribute to the commission of violent conduct or crime pose a danger to the public health, safety and welfare of the citizens of the City; and

WHEREAS, state law provides at OCGA Sec. 41-2-1, that upon filing of a petition, any nuisance which tends to the immediate annoyance of the public in general, is manifestly injurious to the public health or safety, or tends greatly to corrupt the manners and morals of the public may be abated; and

WHEREAS, state law provides at OCGA Sec. 41-2-5, that the municipal court shall also have jurisdiction to hear and determine the existence of a nuisance complained of within a municipality, and if found to exist to order its abatement; and

WHEREAS, Chapter 74 “Environment,” Article V “Nuisances,” of the City of Atlanta Code of Ordinances (the Nuisance Code) provides that certain conditions and circumstances are declared to be a nuisance, and provides the proceedings for abatement and remedies of nuisances that may be found in the City; and

WHEREAS, so that the City could address nuisance properties or activities thereon that are a threat to the public health, welfare and safety, on May 17, 2021 the Atlanta City Council adopted 21-O-0259 which was approved by the Mayor on May 24, 2021; and

WHEREAS, pursuant to 21-O-0259, the City amended the Nuisance Code at 74-175 to establish that violent conduct or crime within certain properties in the City that endangers the public health, safety and welfare of the citizens of the City shall be a public nuisance, and to provide for abatement procedures and remedies; and

WHEREAS, Section 74-175(e) of the Nuisance Code provides that in abating the public nuisance the municipal court may order certain remedies including that the owner, the owner's managing agent or the party responsible for the property implement security measures on the property and that the owner initiate dispossessory proceedings to evict tenants engaged in or permitting the conditions that contribute to the violent conduct or crime on the property; and

WHEREAS, the City of Atlanta continues to experience violent crimes which have consistently occurred within or near specific nuisance properties; and

WHEREAS, it is the desire of the Atlanta City Council to strengthen the City of Atlanta's abatement tools to address violent conduct or crime occurring within certain properties in the City which endanger the public health, safety and welfare of the citizens of the City and a public nuisance is determined by the municipal court; and

WHEREAS, the Atlanta City Council desires to authorize the municipal court to, in abating such a public nuisance, order the property to immediately close in order to permit the abatement of the nuisance through the implementation of the remedies available to the municipal court pursuant to Section 74-175(e); and

WHEREAS to ensure the City is addressing nuisance properties or activities thereon that are a threat to the public health, welfare, and safety, a formal investigation must be conducted to provide evidence of nuisance activity directly linked to a specific property or properties to execute a closure; and

WHEREAS, in order for execution of a formal investigation or closure, nuisance properties must have violent conduct or crime within proximity of four (4) feet of the exterior of the location, including any outside patio or area occupied by a person(s); and

WHEREAS, properties, such as parking lot and space, are considered nuisance properties after a formal investigation is conducted following violent conduct or crime with the parking lot owner or owner's managing agent; and

WHEREAS, Parking lots and spaces not directly linked to a specific business or businesses cannot be used to designate an adjacent business or businesses as a nuisance property unless conducting business on the said property while a violent crime or conduct occurs; and

WHEREAS, additionally, it is the desire of the Atlanta City Council that upon the second determination of a public nuisance by the municipal court regarding the same property within twenty-four months, that the municipal court shall, in abating such a public nuisance, order the property to immediately close in order to permit the abatement of nuisance through the implementation of the remedies available to the municipal court pursuant to Section 74-175(e); and

WHEREAS, a closure ordered by the municipal court in order to abate a nuisance in accordance herewith shall be for the period that the municipal court determines shall be necessary to abate the nuisance, but in no event may the closing be for longer than twelve months; and

WHEREAS, any official notice or complaint filed under the purview of this Amendment or similar amendment must be addressed to both landlord and tenant to be considered adequate notice given. Any notice to the landlord cannot and should not be considered notice to the tenant. Both the landlord and tenant will be held in compliance with Section 74; and

WHEREAS, a closure directed by the municipal court to abate the nuisance in accordance with this ordinance shall not be considered an act of seizure, condemnation, ownership, or control by the City of Atlanta.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS,
as follows:

SECTION 1. That Chapter 74 “Environment,” Article V “Nuisances” Section 74-175 of the City of Atlanta Code of Ordinances shall hereby be amended such that it shall thereafter read as follows (with permanent insertions in underline font and permanent deletions in strikethrough font):

Sec. 74-175. Properties where activities therein and thereon threaten the public health, safety and welfare.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Closing means causing properties to be vacated and secured against unauthorized entry.

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 and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design.

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

Owner's managing agent means a person, corporation, partnership or limited liability company that is authorized by the owner to operate and manage the property.

Parking lot or space means any space used for parking adjacent to the structure.

Properties means dwellings, buildings or structures and parking lots or spaces.

Tenant means one who occupies lands or the premises of another in subordination to that other's title, and with such other person's assent, express or implied.

Violent conduct or crime means conduct which constitutes a probable danger of physical harm, such as assault, battery, sexual assault, armed robbery, homicide, or any other criminal activity that endangers the public health, safety and welfare of the citizens of the city.

- (b) *Nuisance declared.* The city finds that multiple incidents of violent conduct or crime occurring on certain properties and conditions on such properties that foster or contribute to the commission of violent crime, endanger the public health, safety and welfare of the citizens of the city.
- (c) *Abatement.* Where violent conduct or crime occurs on certain properties, the criminal activity causing the nuisance shall be enjoined, abated, and prevented. The owner of the property upon being notified shall take actions that are reasonable and necessary to reduce and eliminate the conditions that contribute to the commission of such violent conduct or crime. If the owner, the owner's managing agent or the party responsible for the property knows or has reason to know of the criminal activity and fails to take reasonable, legally available actions to abate the nuisance, a governmental authority may abate the nuisance. The municipal court may assess the owner for the cost of abating the nuisance.
- (d) *Notice.* For purposes of this section, an owner, the owner's managing agent or the party responsible for the property is deemed to know or have reason to know of the nuisance if the owner, the owner's managing agent or the party responsible for the property has received notice from the city of documented reports of violent conduct or crime occurring on the property.
- (e) *Remedy.* In abating the public nuisance, the municipal court may order:
 - (1) That the owner, the owner's managing agent or the party responsible for the property implement security measures on the property.
 - (2) That the owner initiate dispossessory proceedings to evict tenants engaged in or permitting the conditions that contribute to the violent conduct or crime on the property.
 - (3) That the owner be assessed with the cost of abating the nuisance.
 - (4) That the owner, the owner's managing agent or the party responsible for the property be enjoined from conducting any other activities on the property.
 - (5) Any other remedy deemed appropriate in abating nuisances in the state.

(f) *Abatement Closing.*

(1) In addition to the remedies listed in subsection (e), in abating the public nuisance, the municipal court may order the immediate closing of the property to permit abatement through the implementation of the remedies which may be order pursuant to subsection (e).

(2) Upon the municipal court's second finding that a property is a public nuisance in accordance with this section within 24 months, in addition to the remedies listed in

subsection (e), in abating the public nuisance, the municipal court shall order the immediate closing of the property to permit abatement through the implementation of the remedies which may be ordered pursuant to subsection (e).

(3)A closing ordered by the municipal court in order to abate a nuisance in accordance with this section shall be for the period that the municipal court determines shall be necessary to abate the nuisance, but in no event may the closing be for longer than twelve months.

(4) A closing directed by the municipal court to abate the nuisance in accordance with this section shall not be considered an act of seizure, condemnation, ownership, or control by the City of Atlanta.

SECTION 2: The amendments in this ordinance shall become effective immediately.

SECTION 3: That all ordinances and parts of ordinances in conflict herewith are hereby waived to the extent of the conflict only.

SECTION 4: That the Municipal Clerk is instructed to retain all legislative history references in the codified versions of Chapter 74 including Editor's notes, and shall not delete any such references, but shall amend them to include this ordinance.