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13-O-1051

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2186

Ivory Lee Young

AN ORDINANCE BY COUNCIL MEMBER IVORY LEE YOUNG

AN ORDINANCE TO AMEND CHAPTER 54 (COMMUNITY DEVELOPMENT) OF THE ATLANTA CITY CODE BY ADDING ARTICLE IV TO BE ENTITLED "ABANDONED AND BLIGHTED PROPERTY CONSERVATORSHIP ORDINANCE" FOR THE PURPOSE OF CREATING A CONSERVATORSHIP PROGRAM FOR ABANDONED AND BLIGHTED PROPERTY WITHIN CITY LIMITS; AND FOR OTHER PURPOSES.

AUTOMATICALLY TERMINATED AND FILED BY CLERK PER CHARTER SECTION 2-407 DEC 02 2013

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1ST ADOPT 2ND READ & REFER
- PERSONAL PAPER REFER

Date Referred 5/20/13

Referred To: CD/HR

Date Referred _____

Referred To: _____

Date Referred _____

Referred To: _____

First Reading

Committee _____

Date _____

Chair _____

Referred To _____

Committee

CD/HR

Date

5/28/13

Chair

Action

Fav, Adv, Hold (See rev.side)
Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (See rev.side)
Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (See rev.side)
Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (See rev.side)
Other

Members

Refer To

FINAL COUNCIL ACTION

2ND 1ST & 2ND 3RD

Readings

Consent V Vote RC Vote

CERTIFIED

DEC 02 2013

ATLANTA CITY COUNCIL PRESIDENT

[Signature]

CERTIFIED

DEC 02 2013

Flora Dushin Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

**AN ORDINANCE
BY COUNCIL MEMBER IVORY LEE YOUNG, JR.**

AN ORDINANCE TO AMEND CHAPTER 54 (COMMUNITY DEVELOPMENT) OF THE ATLANTA CITY CODE BY ADDING ARTICLE IV TO BE ENTITLED "ABANDONED AND BLIGHTED PROPERTY CONSERVATORSHIP ORDINANCE" FOR THE PURPOSE OF CREATING A CONSERVATORSHIP PROGRAM FOR ABANDONED AND BLIGHTED PROPERTY WITHIN CITY LIMITS; AND FOR OTHER PURPOSES.

WHEREAS, the purpose of the Abandoned and Blighted Property Conservatorship Program is to provide communities throughout the City of Atlanta a new tool, frequently used in other states, to address blight by taking abandoned and blighted properties and returning them to productive use; and

WHEREAS, conservatorship, based on its proven success in other jurisdictions, is an effective redevelopment tool that enables residents, business owners, non-profit corporations, and government entities to take control of the future of their communities by addressing the problem of abandoned and blighted properties; and

WHEREAS, conservatorship is the appointment of a third party to take possession and control of a property in order to make repairs and return the property to productive use and the conservator is appointed by the court after a formal process and hearing, including notice to the owner and lien holders; and

WHEREAS, under the Abandoned and Blighted Property Conservatorship Program, the rights of the property owner are balanced against the rights of the neighboring parties and, upon past history and the consideration of the court, the owner can step in at any time and petition the court to terminate the conservatorship and, after reimbursing all costs, regain control of the property; and

WHEREAS, the conservatorship process begins with the filing of a petition by a "party of interest", which is defined as owners, lien holders, government entities, residents or business owners within 500 feet of the property, and development based non-profit corporations within a mile of the property; and

WHEREAS, if appointed by the court, the conservator takes possession of, but not title to, the property and has all the powers of the owner and is deemed to have ownership for the purposes of applying for funds, approvals, and permits and the actual owner retains all property liabilities, including the obligation to pay taxes and assessments; and

WHEREAS, the conservator must submit an initial plan and final accounting to the court and to all parties, including costs estimates, financing plan, and work description and once the property

has been rehabilitated, and if the owner has not approached the court to regain possession after paying all costs, the conservator may seek the court's permission to sell the property and title is transferred free and clear of all liens and claims.

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

Section 1: Article IV is hereby added to Chapter 54, (Community Development) of the Atlanta City Code and to be entitled "Abandoned and Blighted Property Conservatorship Ordinance", said Article to create an abandoned and blighted property conservatorship program and to read as follows:

Sec. 54-100. Short Title.

This ordinance shall be known and may be cited as the Abandoned and Blighted Property Conservatorship Ordinance".

54-101. Legislative Findings and Purpose.

The Atlanta City Council finds and declares that:

- (a) The City's communities are important to the City's economic health by providing a focal point for businesses and services and to this City's quality of life with its rich history and diverse communities. However, many communities suffer from blighted properties that have been abandoned by their owners.
- (b) Many citizens of this City are adversely affected by abandoned and blighted residential, commercial and industrial properties, including those citizens who live in proximity to such substandard buildings, as well as those who own property in the vicinity of such buildings.
- (c) Substandard, deteriorating and abandoned residential, commercial and industrial structures are a public safety threat and nuisance and their blighting effect diminishes property values in the communities in which these properties are located.
- (d) If these buildings are not rehabilitated, they are likely to remain abandoned and further deteriorate, resulting in increased costs to the City and taxpayers to secure and ultimately demolish them.
- (e) Providing a mechanism to transform abandoned and blighted buildings into productive reuse is an opportunity for communities to modernize, revitalize, grow, and to improve the quality of life for neighbors who are already there.
- (f) If the owner of a residential, commercial or industrial building fails to maintain the property in accordance with applicable municipal codes or standards of public welfare or safety, it is in the best interest of the City and the community for the Atlanta Municipal Court, pursuant to the provisions of this ordinance, to appoint a conservator to make the necessary improvements before

the building deteriorates further and necessitates demolition, resulting in the removal of the building from the housing supply or prohibiting future productive economic use.

54-102. Definitions.

The following words and phrases when used in this ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Actively marketed.” A “for sale” sign has been placed on the property with accurate contact information and the owner has done at least one of the following:

- (1) engaged the services of a real estate licensee under Chapter 40 of Title 43 of the Official Code of Georgia Annotated, to place the property in a Multiple Listing Service or otherwise market the property;
- (2) placed weekly or more frequent advertisements in print or electronic media; or
- (3) distributed printed advertisements.

“Building.” A residential, commercial or industrial building or structure and the land appurtenant thereto.

“Code.” A building, housing, property maintenance, fire, health or other public safety ordinance enacted by a municipality or having state-wide application.

“Competent entity.” A person or entity, including a governmental unit with experience in the rehabilitation of residential, commercial or industrial buildings and the ability to provide or obtain the necessary financing for such rehabilitation.

“Costs of rehabilitation.” Costs and expenses for construction, stabilization, rehabilitation, maintenance and operation or demolition, including reasonable nonconstruction costs associated with the project, including, but not limited to, environmental remediation, architectural, engineering and legal fees, permits, and financing fees. **“Court.”** The pleas Atlanta Municipal Court.

“Historic property.” A property which is listed on the National Register of Historic Places or is a contributing property in a national register historic district or is located in a landmark or historic district.

“Immediate family.” A parent, spouse, child, brother or sister.

“Nonprofit corporation.” A nonprofit corporation that has, as one of its purposes, community development activities, including economic development, historic preservation or the promotion or enhancement of affordable housing opportunities.

“Owner.” The holder or holders of title to, or of a legal or equitable interest in, a residential, commercial or industrial building. The term shall include an heir, assignee, trustee, beneficiary and lessee provided the ownership interest is a matter of public record.

“Party in interest.” A person or entity who has a direct and immediate interest in a residential, commercial or industrial building, including:

- (1) The owner.

- (2) A lienholder and other secured creditor of the owner.
- (3) A resident or business owner within 500 feet of the building.
- (4) A nonprofit corporation, including a redevelopment authority, which:
 - (i) except as set forth in subparagraph (ii), is located within the City of Atlanta; or
 - (ii) has participated in a project within a one-mile radius of the location of the building.
- (5) City of Atlanta

“Public nuisance.” A property that, because of physical condition or use, has been declared by the appropriate official a public nuisance in accordance with the local housing, building, health, fire or related code or is determined to be a public nuisance by the court.

“Substantial rehabilitation.” Repairs to the building where:

- (1) the cost of repairs, replacements and improvements exceeds 15% of the property's value after completion of all repairs, replacements and improvements; or
- (2) more than one major building component is being replaced. Major building components include:
 - (i) roof structures;
 - (ii) ceilings;
 - (iii) wall or floor structures;
 - (iv) foundations;
 - (v) plumbing systems;
 - (vi) heating and air conditioning systems; and
 - (vii) electrical systems.

Sec. 54-103. Initiation of Action

(a) Filing of petition. A petition for the appointment of a conservator to take possession and to undertake the rehabilitation of a building may be filed by a party in interest in the Atlanta Municipal Court. The proceeding on the petition shall constitute an action in rem.

(b) Contents. The petition submitted to the court shall include a sworn statement that, to the best of the petitioner's knowledge, the property meets the conditions for conservatorship set forth in section 5(d) and to the extent available to the petitioner after reasonable efforts to obtain such information:

- (1) A copy of any citation charging the owner with being in violation of municipal code requirements or declaring the building to be a public nuisance.
- (2) A recommendation as to which person or entity should be appointed conservator.

- (3) A preliminary plan with initial cost estimates for rehabilitation of the building to bring it into compliance with all municipal codes and duly adopted plans for the area in which the building is located and anticipated funding sources.
- (c) Notice of lis pendens. The petitioner shall file a notice of lis pendens in the county land records in which the property is located.
- (d) Notification of owner, political subdivisions and lienholders.--
- (1) Upon filing the petition with the court, the petitioner shall notify the current owner of the property, and all lienholders of the filing by registered or certified mail to the last known address of each and by posting a copy of the notice on the building.
 - (2) In the event the registered or certified mail is returned with notation by the postal authorities that the recipient refused to accept the mail, the petitioner may mail a copy to the recipient at the same address by ordinary mail with the return address of the petitioner appearing thereon.
 - (3) Service by ordinary mail shall be presumed complete if the mail is not returned to the petitioner within 30 days after mailing.
 - (4) In the event that the registered or certified mail is returned with the notation by the postal authorities that it was unclaimed, the notice shall be personally served.
 - (5) In the event that the personal service is not able to be made after two such attempts, then the petitioner shall mail the petition to the recipient at the same address by ordinary mail with the return address of the petitioner appearing thereon with service by ordinary mail deemed complete if the mail is not returned to the petitioner within 15 days after the mailing.
 - (6) The petitioner shall also notify the owner and each lienholder of the hearing date and provide notice that the owner and lienholders may petition to intervene in the action.

Sec. 54-104. Appointment of Conservator

- (a) General rule. The court shall act upon a petition submitted by holding a hearing within 120 days of receipt of the petition and rendering a decision no later than 30 days after completion of the hearing.
- (b) Intervention. A party in interest may intervene in the proceeding and be heard with respect to the petition, the requested relief or any other matter which may come before the court in connection with the proceeding.
- (c) Hearing. At the hearing, any party in interest shall be permitted to present evidence to support or contest the petition.

(d) Conditions for conservatorship. If a petition is filed under section 54-104, the court may appoint a conservator if all of the following apply:

- (1) The building has not been legally occupied for at least the previous 12 months.
- (2) The building has not been actively marketed during the 60 days prior to the date of the petition.
- (3) The building is not subject to an existing foreclosure action.
- (4) The current owner fails to present sufficient evidence that he has acquired the property within the preceding six months. The evidence shall not include instances where the prior owner is a member of the immediate family of the current owner, unless the transfer of title results from the death of the prior owner, or where the current or prior owner is a corporation, partnership or other entity in which either owner or the immediate family of either owner has an interest in excess of 5%.
- (5) The court finds at least three of the following:
 - (i) The building or physical structure is a public nuisance.
 - (ii) The building is in need of substantial rehabilitation and no rehabilitation has taken place during the previous 12 months.
 - (iii) The building is unfit for human habitation, occupancy or use.
 - (iv) The condition and vacancy of the building materially increase the risk of fire to the building and to adjacent properties.
- (v) The building is subject to unauthorized entry leading to potential health and safety hazards and one of the following applies:
 - (A) The owner has failed to take reasonable and necessary measures to secure the building.
 - (B) The City has secured the building in order to prevent such hazards after the owner has failed to do so.
- (vi) The property is an attractive nuisance to children, including, but not limited to, the presence of abandoned wells, shafts, basements, excavations and unsafe structures.
- (vii) The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds has created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards.
- (viii) The dilapidated appearance or other condition of the building negatively affects the economic well-being of residents and businesses in close proximity to the building, including decreases in property value and loss of business, and the owner has failed to take reasonable and necessary measures to remedy appearance or the condition.

(ix) The property is an attractive nuisance for illicit purposes, including prostitution, drug use and vagrancy.

(e) Appointment.

(1) If the court determines after a hearing that the property has met the conditions of subsection (d), the court may appoint a conservator and grant such other relief as may be just and appropriate.

(2) The court shall give first consideration for appointment as conservator to the senior lienholder on the property.

(3) In the event the senior lienholder is found to be not competent or declines the appointment, the court may appoint a nonprofit corporation or other competent entity. The nonprofit corporation or entity must be located in the city or must have participated in a project within a one-mile radius of the location of the property. In appointing a conservator, the court shall:

- (i) consider any recommendations contained in the petition or otherwise presented by a party in interest; and
- (ii) give preference to the appointment of a nonprofit corporation or governmental unit over an individual.

(f) Conditional relief.

(1) If the court finds after a hearing that the conditions for conservatorship set forth in subsection (d) have been established, but the owner represents that the violations or nuisance or emergency condition will be abated in a reasonable period, the court may allow the owner to proceed to remedy the conditions.

(2) If the conditions set forth in paragraph (1) have been satisfied, the court shall enter an order providing that, in the event that the violations or nuisance or emergency conditions are not abated by the owner by a specific date or that other specified remedial activities have not occurred by a specific date or dates, an order granting the relief requested in the petition shall be entered.

(3) The court may also require the owner to post a bond in the amount of the repair costs estimated in the petition as a condition to retaining possession of the building.

(g) Conservator's lien. The conservator may file a lien against the property in an amount based on the costs incurred during the conservatorship. The lien amount may be adjusted from time to time.

(h) Immediate possession. The conservator shall promptly take possession of the building and other property subject to the conservatorship and shall immediately be authorized to exercise all powers of this ordinance.