

**RESOLUTION 11-2016**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF CARROLLTON, STATE OF GEORGIA, TO AMEND CHAPTER 50 (“ENVIRONMENT”), ARTICLE II (“NUISANCES”) OF THE CODE OF ORDINANCES, CITY OF CARROLLTON, GEORGIA TO ADD A NEW DIVISION 4 (“UNSAFE BUILDINGS”) TO PROVIDE FOR THE IDENTIFICATION, INSPECTION, ABATEMENT, AND IF NECESSARY THE DEMOLITION OF UNSAFE BUILDINGS AND STRUCTURES WITHIN THE CITY OF CARROLLTON

WHEREAS, Chapter 50 (“Environment”), Article II (“Nuisances”) of the Code of Ordinances, City of Carrollton, Georgia generally provides for the identification and abatement of various nuisances within the City of Carrollton, Georgia; and

WHEREAS, the Mayor and City Council of Carrollton find that – within the City of Carrollton, Georgia – there exist dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and are inimical to the welfare of the residents of the City of Carrollton and are dangerous and injurious to the health, safety, and welfare of the residents of the City of Carrollton; and

WHEREAS, the Mayor and City Council of Carrollton further find that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures; and

WHEREAS, the Mayor and City Council of Carrollton also find that – in the City of Carrollton – there exist conditions or uses of real estate which render adjacent real estate unsafe or inimical to safe human habitation, and that such uses are dangerous and injurious to the health, safety, and welfare of the residents of the City of Carrollton; and

WHEREAS, by statute, the Georgia General Assembly has authorized local governments to adopt ordinances for the identification, inspection, abatement, and if necessary the demolition of unsafe buildings and structures; and

WHEREAS, the Mayor and City Council of Carrollton find it in the public interest to adopt such an ordinance.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of Carrollton do hereby amend Chapter 50 (“Environment”), Article II (“Nuisances”) of the Code of Ordinances, City of Carrollton, Georgia to add a new Division 4 (“Unsafe Buildings”) attached hereto as Exhibit “A.”

ADOPTED this 1st day of February, 2016.

MAYOR AND CITY COUNCIL OF CARROLLTON

  
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Mayor, City of Carrollton

  
\_\_\_\_\_  
Clerk, City of Carrollton.



# Exhibit “A”

Chapter 50

ENVIRONMENT

ARTICLE II. NUISANCES

DIVISION 4. UNSAFE BUILDINGS

**Sec. 50-80. Definitions.**

(a) As used in Sections 50-80 through 50-90 herein, the terms:

**“Applicable codes”** means any optional housing or abatement standard provided in O.C.G.A. tit. 8, ch. 2., 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; any fire or life safety code as provided for in O.C.G.A. tit. 25, ch. 2; and any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in O.C.G.A. tit. 8, ch. 2, after October 1, 1991, provided that such building or minimum standard codes for real property improvements shall be deemed to mean those buildings or minimum standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law.

**“Closing”** means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.

**“Drug crime”** means an act, which is a violation of O.C.G.A. tit. 16, ch. 13, art. 2, known as the “Georgia Controlled Substances Act.”

**“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.

**“Governing authority”** means the Mayor and City Council of the City of Carrollton, Georgia.

**“Municipality”** means the City of Carrollton, Georgia.

**“Owner”** means the holder of the title in fee simple and every mortgagee of record.

**“Interested parties”** means:

- (1) Owner;

- (2) 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;
- (3) Those parties having filed a notice in accordance with O.C.G.A. § 48-3-9;
- (4) 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 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
- (5) Persons in possession of said property and premises.

**“Public authority”** means any member of the 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.

**“Public officer”** means the officer or officers who are authorized by O.C.G.A. §§ 41-2-7 through 41-2-17 and by this article adopted under O.C.G.A. §§ 41-2-7 through 41-2-17 to exercise the powers prescribed by this article or any agent of such officer or officers.

**“Repair”** means altering or improving a dwelling, building, or structure so as to bring it into compliance with the applicable codes in the jurisdiction where the dwelling, building, or structure is located 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.

**“Resident”** means any person residing in the jurisdiction where the dwelling, building, or structure is located on or after the date on which the alleged nuisance arose.

(b) Definitions incorporated by reference. To the extent not stated above, the definitions set forth in O.C.G.A. § 41-2-8 are incorporated herein by reference.

#### **Sec. 50-81. Purpose.**

It is found and declared that in the City of Carrollton, Georgia 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 are inimical to the welfare of the residents of the City of Carrollton and are dangerous and injurious to the health, safety, and welfare of the residents of the City of Carrollton; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures. It is further found and declared that in the City of Carrollton there is in existence conditions or uses of real estate which render adjacent real estate unsafe or inimical to safe human habitation, which such uses are dangerous and injurious to the health, safety, and welfare of the residents of the City of Carrollton, and that a public

necessity exists for the repair of such conditions or the cessation of such uses. Therefore, it is the purpose of this article that whenever the governing authority finds that there exists in the City of Carrollton dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and defects increasing the hazards of fire, accidents, or other calamities; lack of adequate ventilation, light, or sanitary facilities; or other conditions rendering such dwellings, buildings, or structures, unfit, 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 of Carrollton, or vacant dwellings, buildings, structures, or properties in which drug crimes are being committed, the City of Carrollton may exercise its police power to repair, close, or demolish the aforesaid dwellings, buildings, or structures in the manner provided in this article and O.C.G.A. §§ 41-2-7 through 41-2-17.

All the provisions of this article and O.C.G.A. §§ 41-2-8 through 41-2-17, including method and procedure, shall also be applied to private property where there exists 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. A finding by any public authority or public officer shall constitute prima facie evidence that said property is in violation of this article and O.C.G.A. §§ 41-2-8 through 41-2-17.

**Sec. 50-82. Scope and Applicability.**

(a) This article is enacted pursuant to O.C.G.A. §§ 41-2-7 through 41-2-17, as amended, and sometimes referenced herein as the “statute” or “code.” O.C.G.A. § 41-2-7 specifies the scope and purpose of this article. All powers and authorities granted to public authorities and public officers by the statute are hereby incorporated herein by reference so as to be assumed, delegated, and granted pursuant to this article.

(b) The provisions of this article shall apply to both residential and non-residential property, whether being occupied or not and whether being developed or not, within the corporate limits of the Municipality.

(c) It is the duty of the owner of every dwelling, building, structure, or property within the Municipality to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the Municipality, or such ordinances which regulate or 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.

**Sec. 50-83. Authority and Powers of the City Manager or His Designee.**

(a) The City Manager or his designee has been designated with the responsibility to exercise the powers prescribed by this article.

(b) The City Manager or his designee is hereby authorized, pursuant to O.C.G.A. § 41-2-11, to exercise such powers as may be necessary to carry out and effectuate the purpose and provisions of this article, including but not limited to the following powers:

- (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 retain experts including certified real estate appraisers, qualified building contractors, qualified building inspectors, engineers, surveyors, and accountants;
- (3) To administer oaths and affirmations, to examine witnesses, and to receive evidence;
- (4) 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;
- (5) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to carry out the purposes of this article;
- (6) To delegate any of his functions and powers under this article to such officers and agents as he may designate; and
- (7) To issue citations for violations of the provisions of this article. The City Manager or his designee shall also be authorized to request the City Attorney to prepare and file complaints to enforce such citations in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this article.

**Sec. 50-84. Standards for Determining Unfit Buildings and Structures.**

(a) Any dwelling, building, or structure that has any of the following conditions (as listed below under subsection (b)), such that the life, health, property, or safety of its occupants or the general public are endangered are hereby declared illegal and unfit for human habitation or the building or structure's current commercial, industrial or business use (as applicable), and shall be abated by repair or demolition. The complaint and inspection of an unfit dwelling, building, or structure shall be as set forth in section 50-85 of this article.

(b) The City Manager or his designee is authorized to determine 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, structure, or property which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, structure, or property; of the occupants of neighborhood dwellings, buildings, structures, or properties; or of other residents of the City of Carrollton, Georgia. Examples of such conditions include, but are not limited to, the following conditions of any dwelling, building, structure, or property:

- (1) Defects 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, including but not limited to rodent infestation;
- (7) Damage by fire, flood, wind, or other cause to the extent that the structural integrity of the building or structure is less than it was prior to damage and is less than the minimum requirement established by the applicable state minimum standard codes for similar new buildings;
- (8) Construction or maintenance in violation of a specific requirement of the state minimum standard codes, or of any other applicable ordinance of the Municipality, or of any other applicable state law;
- (9) Decay, deterioration, or dilapidation such that full or partial collapse is likely;
- (10) The stress in any material, member, or portion thereof, due to all-imposed loads, including dead load, which exceeds the stresses allowed by the applicable state standard minimum code for similar new buildings;
- (11) The means of egress are not of adequate size or are not arranged to provide a safe path of travel in case of fire or panic; or the fire doors, closing devices and similar features, are in disrepair or in a dilapidated or non-working condition to render the dwelling, building, structure, or property unsafe in case of fire or panic;
- (12) Exterior siding that is inadequate and unsecured, or is not weather, water, and windproof, such that the dwelling, building, or structure would not pass existing state minimum standard codes for similar new dwellings, buildings, or structures;
- (13) Conditions such that the structure or portion thereof, for whatever reason, is manifestly unsafe or unsanitary for the purpose for which it is being used;
- (14) The dwelling, building, or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes upon personal observation of a law enforcement agency and evidence of drug crimes being committed; and
- (15) Any other condition constituting a public nuisance, including for example, maintaining stagnant or fetid water on the premises; an accumulation of trash, junk, filth, or other unsanitary and unsafe conditions; the generation of smoke or fumes in sufficient amounts to cause odor or annoyance to the inhabitants of the Municipality; and/or maintaining a dangerous or diseased animal or fowl or

maintaining such a number of animals in such foul and unsanitary conditions as to constitute a public nuisance.

#### **Sec. 50-85. Complaint and Inspection.**

(a) Whenever a request is filed with the City Manager or his designee, by a public authority, or by at least five residents of the Municipality, that any dwelling, building, or structure: (1) is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; (2) is vacant and being used in connection with the commission of drug crimes; (3) constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions; (4) has an accumulation of weeds, trash, junk, filth, and other unsanitary or unsafe conditions constituting a public health hazard or a general nuisance to those persons residing in the vicinity; (5) constitutes a public nuisance; or (6) has one or more of the conditions defined in section 50-84 above, the City Manager or his designee shall make an investigation or inspection of the specific dwelling, building, structure, or property.

(b) Upon finding that any dwelling, building, structure, or property: (1) is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; (2) is vacant and being used in connection with the commission of drug crimes; (3) constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions; (4) has an accumulation of weeds, trash, junk, filth, and other unsanitary or unsafe conditions constituting a public health hazard or a general nuisance to those persons residing in the vicinity; (5) constitutes a public nuisance; or (6) has one or more of the conditions defined in section 50-84 above, the City Manager or his designee 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 City Manager or his designee to abate the alleged nuisance. The summons shall notify the interested parties that a hearing will be held before the Municipal Court at a date and time certain and at a place within the Municipality. Such hearing shall be held not less than 15 days nor more than 45 days after the filing of said complaint in the 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 hearing;

(c) That if, after such notice and hearing, the court determines that the dwelling, building, or structure in question (1) is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; (2) is vacant and being used in connection with the commission of drug crimes; (3) constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions; (4) has an accumulation of weeds, trash, junk, filth, and other unsanitary or unsafe conditions constituting a public health hazard or a general nuisance to those persons residing in the vicinity; (5) constitutes a public nuisance; or (6) has one or more of the conditions defined in section 50-84 above, the Municipal 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 violation 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 article, the Municipal 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 Municipal 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 Georgia Code, tit. 43, ch. 39A, 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 violation in force in the jurisdiction;

(d) That, if the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the City Manager or his designee 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 section 50-87 below 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 City Manager or his designee 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.”

(e) If the City Manager or his designee 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 City Manager or his designee and the 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

(f) That the amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the county tax commissioner, 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.

(g) Said 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 the Superior Court of Carroll County and shall relate back to the date of the filing of the lis pendens notice required under subsection (c) of section 50-86 below. The Clerk of the Superior Court of Carroll County shall record and index such certified copy of the order in the deed records of Carroll 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.

(h) Upon final determination of costs, fees, and expenses incurred in accordance with this article, the City Manager or his designee shall transmit to the county tax commissioner 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 City Manager or his designee shall be transmitted within 90 days of completion of the repairs, demolition, or closure. It shall be the duty of the county tax commissioner to collect the amount of the lien using all methods available for collecting real property ad valorem taxes, including specifically Georgia Code, tit. 48, ch. 4; 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. The county tax commissioner shall collect and enforce municipal liens imposed pursuant to this article in accordance with O.C.G.A. § 48-5-359.1. The county tax commissioner shall remit the amount collected to the governing authority of the Municipality.

(i) Enforcement of liens pursuant to this Code section may be initiated at any time following receipt by the county tax commissioner 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.

(j) 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 governing authority and the county tax commissioner 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 48-4-81.

(k) 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 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.

(l) Review of the Municipal Court's 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.

(m) Nothing in this article shall be construed to impair or limit in any way the power of the Municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

**Sec. 50-86. Service of Complaints and Orders.**

(a) Complaints issued by the City Manager or his designee pursuant to this article shall be served in the following manner. At least 14 days prior to the date of the hearing, the City Manager or his designee 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.

(b) 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 Carroll County, Georgia once a week for two consecutive weeks prior to the hearing.

(c) A notice of lis pendens shall be filed in the Office of the Clerk of the Superior Court of Carroll County at the time of filing the complaint in the Municipal Court. Such notice shall have the same force and effect as other lis pendens notices provided by law.

(d) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this section 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. 50-87. Injunctions.**

Any person affected by an order issued by the public officer may petition to the Superior Court of Carroll County for an injunction restraining the City Manager or his designee from carrying out the provisions of the order and the Superior Court may, upon such petition, issue a temporary injunction restraining the public officer 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 public officer. De novo hearings shall be had by the Superior Court on petitions within 20 days. The Superior 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 a bond in any amount before obtaining a temporary injunction under this section.

**Sec. 50-88. 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 the State of Georgia nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State of Georgia.

**Sec. 50-89. Appropriations; Grants; Donations.**

The Municipality 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. 50-90. Powers Supplemental to Other Laws.**

Nothing in this article or O.C.G.A. §§ 41-2-7 through 41-2-17 shall be construed to abrogate or impair the power of the courts or any department of the Municipality to enforce any provisions of the Municipality's charter, ordinances, or regulations nor to prevent or punish violations thereof; and the powers conferred by this article or O.C.G.A. §§ 41-2-7 through 41-2-17 shall be in addition to and supplemental to the powers conferred by any other law. Moreover, ordinances relating to the subject matter of this article and O.C.G.A. §§ 41-2-7 through 41-2-17 adopted prior to July 1, 2001, shall have the same force and effect on and after said date as ordinances adopted subsequent to and by authority of O.C.G.A. §§ 41-2-7 through 41-2-17. In sum, this article provides remedies in addition to and cumulative of all other existing remedies of the Municipality and governing authority.