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HOUSING AND BUILDING CODE ENFORCEMENT AND VACANT PROPERTIES:

An Analysis of Legal and Policy Tools Available in Columbus, Georgia

Center for Community Progress Memorandum to the City of Columbus, Georgia

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ABOUT CENTER FOR COMMUNITY PROGRESS

The mission of Center for Community Progress is to foster strong, equitable communities where vacant, abandoned, and deteriorated properties are transformed into assets for neighbors and neighborhoods. Founded in 2010, Community Progress is the leading national, nonprofit resource for urban, suburban, and rural communities seeking to address the full cycle of property revitalization. The organization fulfills its mission by nurturing strong leadership and supporting systemic reforms. Community Progress works to ensure that public, private, and community leaders have the knowledge and capacity to create and sustain change. It also works to ensure that all communities have the policies, tools, and resources they need to support the effective, equitable reuse of vacant, abandoned, and deteriorated properties. More information is available at www.communityprogress.net.

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I. INTRODUCTION AND KEY INSIGHTS

Columbus, Georgia, home to approximately 200,000 residents, is ranked in the top 100 places to live in the country.¹ Columbus is rich in amenities and resources for community members like jobs, museums, and hospitals, and it boasts numerous cultural and outdoor events enjoyed by tourists from around the country. Columbus is also a statewide leader in local government innovation and best practices. Columbus and Muscogee County were the first City and County to merge in the state of Georgia in 1971, thereby eliminating duplication and cost and providing more streamlined and efficient services to the citizens of the new Columbus Consolidated Government.² In the years since the Great Recession of 2008, Columbus has not only survived--it has thrived. After a high-water mark of unemployment over 10% in 2010, the unemployment rate has steadily decreased in the Columbus metropolitan statistical area to under 5% and the region is experiencing growth and stability.³ Yet, like similar communities around the state of Georgia and around the country, Columbus remains home to challenges that are littered throughout the community—hundreds of vacant and deteriorated properties that threaten the health, safety, and well-being of neighbors and neighborhoods.

¹ See <https://livability.com/best-places/top-100-best-places-to-live/2014/ga/columbus>.

² "Columbus" as used throughout this memorandum is defined as the Columbus Consolidated Government and its geographical and legal jurisdiction. See generally, <https://www.columbusga.gov/>.

³ See https://www.bls.gov/eag/eag.ga_columbus_msa.htm.



Vacant and Deteriorated Properties Slated for Demolition (2019)⁴

Properties like those depicted above slated for public demolition exist all over Columbus, and high concentrations exist in some neighborhoods. Addressing, remediating, and often demolishing such properties within the bounds of state and local law is within the authority of the Columbus Department of Inspections and Code. Unique in the state of Georgia, the Columbus Department of Inspections and Code has a highly organized and public facing data base that tracks the status of all code enforcement cases throughout Columbus, and provides detailed case status information on all properties slated for demolition.⁵ Since 1992, Columbus has completed 240 demolitions.⁶ Between January of 2016 and March of 2019, almost 200 new demolitions were ordered/authorized⁷ and as of June 2019, there were at least 158 demolition cases in the queue.⁸ Recognizing both the significant harm posed to Columbus neighborhoods by vacant, deteriorated properties, and also the excellent work and expertise of the Department of Inspections and Code, the Columbus Council, under Mayor Henderson's leadership, approved a one million dollar expenditure for demolition activity in 2019—representing a dramatic increase from prior years.⁹

Elected officials, community leaders, and residents throughout Columbus are seeking innovative and more effective ways to reduce the presence of vacant and deteriorated properties and the harms they impose. However, despite the increased public investment in demolition activity, a single fact in the Columbus property demolition system has arisen as both a challenge and an opportunity: while liens are generally placed against properties that are demolished in

⁴ Photographs provided courtesy of the Columbus Department of Inspections and Code.

⁵ See generally, www.columbusga.org/CCD.

⁶ See presentation of John Hudgison to Columbus Council, March 19, 2019 available at 3:33 at https://www.youtube.com/watch?v=sC8dNmSOvt8&list=PLPbhJD-0o-sQZ6uZZB36SWvBr_4uxrAV&t=0s.

⁷ See presentation of John Hudgison to Columbus Council, March 19, 2019 available at 3:33 at https://www.youtube.com/watch?v=sC8dNmSOvt8&list=PLPbhJD-0o-sQZ6uZZB36SWvBr_4uxrAV&t=0s.

⁸ See Tony Sloan, "150+ buildings may soon be demolished as Columbus residents plead change in their area," WTVM.com, (May 10, 2019), available at <https://www.wtvm.com/2019/05/11/buildings-may-soon-be-demolished-columbus-residents-plead-change-their-area/>; see also <https://ccg.maps.arcgis.com/apps/opsdashboard/index.html#/9897a9dc3bf349fcdf79a8900ec4132b>.

⁹ See Samantha Serbin, "Increased demolition budget approved to help beautify Columbus," WTVM.com (Jun. 14, 2019), available at <https://www.wtvm.com/2019/06/15/increased-demolition-budget-approved-help-beautify-columbus/>.

Columbus, there does not appear to be any evidence that those liens are enforced resulting in the recoupment of public expenditures, a transfer of the property to responsible hands, or both. *In other words, while Columbus owns the problems (and attendant costs) of vacant and deteriorated properties before and after demolition, Columbus does not own the properties.*

Remediation and demolition activity on vacant and deteriorated properties is a critical, but insufficient, aspect of neighborhood and community stabilization and revitalization. Remediation and demolition without recoupment, over time, of public costs or transfer of such properties into equitable, productive use, is unlikely to change the trajectory or stability of a community. Comprehensive neighborhood stabilization in the face of vacant and deteriorated properties requires prevention, remediation, demolition, *and* systems that meaningfully result in the transfer of such properties into productive use, and that overtime result in less overall public expenditures. *Without authority from local government leaders to enforce demolition and other liens, the good work of departments like the Columbus Department of Inspections and Code will be frustrated and halted before neighborhood stabilization and revitalization can occur.*

In June of 2019, the Columbus Land Bank Authority (“CLBA”) retained the Center for Community Progress (“Community Progress”) to 1) review existing Georgia statutes, the local Columbus Code,¹⁰ and Columbus code enforcement policies and practices related to vacant and deteriorated properties, 2) offer observations and recommendations focused on enforcement of housing and building code liens, and 3) assess the viability of utilizing the CLBA to receive and dispose of properties acquired by the Columbus Consolidated Government through lien foreclosure or some other means. Upon reviewing state and local housing and building code enforcement law and policy, Community Progress developed the following **key insights** that guide the analysis and recommendations in the resulting memorandum below:

- **The Columbus Department of Inspections and Code operates with a high degree of excellence, efficiency, and innovation.** The Department is utilizing data, transparent public mapping and data sharing, and creative programs like amnesty to systematically identify properties in violation of the Columbus Code, and to remediate and demolish the properties that pose a threat to public safety. The Department and its leadership are well positioned to take advantage of and effectively lead the use of any code enforcement tools authorized by the Columbus Council.
- **Recoupment of demolition and other public costs is not achievable in current property markets for a number of structures demolished in Columbus or on the demolition list, but increased neighborhood stabilization and revitalization is achievable in every neighborhood.** Enforcing liens for the sole purpose of recouping public costs will, at least initially, be largely an exercise in frustration because the value of public liens and other property liens will often outweigh the fair market value of the

¹⁰ Hereinafter “Columbus Code” refers to the Columbus Charter and attendant Local Codes including, but not limited to, the Columbus Building Code and the Columbus Property Maintenance Code.

property at issue. Enforcement of housing and building code enforcement liens, including the threat of enforcement through to a forced public sale will, over time, increase voluntary compliance and thereby reduce overall code enforcement and demolition expenditures. And forcing a transfer of vacant and deteriorated properties into productive use (and responsible ownership) will, at a minimum, return many properties to the tax rolls. The primary public goods that will be achieved by lien enforcement at this juncture are the stabilization of neighborhoods and an increase in public safety—public goods desired in every neighborhood in Columbus.

- **Unless Columbus decides to enforce at least some subset of demolition liens through a forced public sale, Columbus will not be able to achieve stabilization and revitalization in many neighborhoods home to demolished structures.** Columbus will continue to expend taxpayer dollars to demolish vacant and deteriorated structures without ever recouping costs. Irresponsible and absentee Columbus property owners will continue to ignore code enforcement violations that, if attended to, could prevent property deterioration before demolition is required. The vacant lots left post-demolition will remain in irresponsible, often absentee ownership, and pose new challenges and harms in the communities in which they sit, rather than moving into productive, tax-producing use.
- **If Columbus moves forward with acquisition of a small subset of vacant and deteriorated properties post-demolition, then the CLBA, with adequate support, is primed to return those properties to productive, tax-producing uses.** Upon the hiring of the first CLBA Director in late 2018, and for the first time in decades, Columbus has a critical property acquisition and disposition tool that is functioning with increasing excellence, a high degree of community support, and effective cross-departmental partnerships. If Columbus acquires properties post-demolition, it could transfer those properties with relative ease to the CLBA which may then dispose of the properties to responsible owners in service to the Columbus community.

Informed by these key insights, this memorandum provides an overview of state and local authority for addressing vacant and deteriorated properties through housing and building code adoption, general lien enforcement, judicial *in rem* demolition lien enforcement, and blight condemnation. This memorandum includes an analysis of the housing and building code enforcement tools available in Columbus, and a series of tables that describe the likely property outcomes upon application of the various tools. Finally, the memorandum offers observations and recommendations for consideration and discussion by the CLBA and Columbus leadership, and various tables and sample decision trees for use by Columbus leaders as they consider variables relevant to the use of a tool. **Appendix A** contains a collated list of all recommendations, and **Appendix B** contains a summary decision tree of property variables, code enforcement tools, and possible property outcomes for consideration and discussion.

The focus of this memorandum is on the vacant and deteriorated properties in Columbus that are in violation of the housing and building code, properties subject to Columbus demolition liens, properties that are on the demolition list, and those properties that may become eligible in the future for public demolition. *This analysis does not address the myriad and important considerations for housing and building code enforcement against occupied properties and the recommendations herein should not be applied to occupied properties—which require a different set of equitable considerations.* This analysis is designed to present an overview of policy considerations related to housing and building code enforcement for Columbus, and should not be viewed as legal opinion for a client on any specific pending matter. All observations and recommendations are subject to the advice and guidance of local legal counsel.

II. LEGAL AUTHORITY TO ADDRESS VACANT AND DETERIORATED PROPERTIES AND APPLICATION IN COLUMBUS, GEORGIA

A variety of state authorized legal tools are available to local governments to address vacant, deteriorated properties. Those tools include general housing and building code enforcement standards and codes, general lien application and enforcement for property remediation or demolition when owners fail to comply with codes, and judicial *in rem* demolition lien enforcement through tax foreclosure proceedings. The primary purpose of housing and building code enforcement standards and codes is to achieve compliance from property owners and, in conjunction with the general police powers of local governments, to ensure public safety. While a forced public sale or other forced transfer of property in violation of codes may be an outcome of housing and building code enforcement, such forced transfers remain in service of the larger goal of encouraging community-wide compliance with housing and building codes, and making local governments whole upon public investment in a property through demolition or otherwise.

Housing and Building Code Enforcement Primary Goal = Compliance and Public Safety

In addition to housing and building code enforcement law and policy, Georgia recently adopted a new statute that authorizes direct local government acquisition of properties that are defined

as “blighted.”¹¹ Georgia’s eminent domain law was amended to allow local governments to acquire certain blighted properties through an eminent domain proceeding known as “blight condemnation.” The primary purpose of blight condemnation, like any other eminent domain proceeding, is public acquisition of property.

Blight Condemnation Primary Goal = Acquisition of Property

A. ADOPTION OF HOUSING AND BUILDING STANDARDS, CODES, AND PROCEDURES

The primary legal tool available to local governments to hold property owners accountable for the condition of their properties is a body of state and local laws authorizing enforcement of various state and national building standards. Authority for the enforcement of minimum building standards is granted to local governments in the state of Georgia through the state constitution,¹² and through a variety of state statutes.

The Columbus Code incorporates the latest edition of the International Building Code and regulates the “erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment use, height area, and maintenance of all buildings and/or structures in Columbus, Georgia; providing for issuance of permits and collection of fees therefor; providing penalties for violations of such code.”¹³ It also establishes a Department of Inspections and Code, and requires significant experience and expertise in all employees.¹⁴ The Chief of Inspections and Code, or the Building Official, is responsible for enforcing the Columbus Codes related to the built environment.¹⁵

B. CODE ENFORCEMENT OPTIONS

Consolidated governments like Columbus are authorized to employ any of the housing and building code enforcement powers granted to either counties or municipalities,¹⁶ an authority

¹¹ Though avoiding its use is difficult given its appearance in Georgia statutes, the word “blight” itself is a problematic and racially loaded term. “Blight” is “[a] facially neutral term infused with racial and ethnic prejudice. While it purportedly assessed the state of urban infrastructure, ‘blight’ was often used to describe the negative impact of certain residents on city neighborhoods.” Shelterforce teaching tool (August 2017), available here https://shelterforce.org/wp-content/uploads/2017/08/TheAnswer_187.pdf. See also Brentin Mock, “The Meaning of Blight,” Citylab (February 2017), available at <https://www.citylab.com/equity/2017/02/the-meaning-of-blight/516801/>.

¹² Ga. Const. Art. IX, § 2, ¶ III(a)(12) (“[A]ny county, municipality, or any combination thereof may exercise the following powers and provide the following services . . . [c]odes, including building, housing, plumbing, and electrical codes.”).

¹³ Columbus, GA Code, Ch. 8 Art. III § 8-13.

¹⁴ Columbus, GA Code, Ch. 8 Art. III § 8-14.2.

¹⁵ Columbus, GA Code, Ch. 8 Art. III § 8-14.3(a).

¹⁶ O.C.G.A. § 36-68-4(b) (“A county which is constituted as a consolidated government under this Code section shall constitute a municipal corporation as well as a county for the purpose of the application of the general laws and Constitution of this state. Such a county may exercise the powers vested in municipalities generally as well as the powers vested in the county by general or local law.”).

that is explicitly preserved in the Columbus Charter.¹⁷ When locally adopted housing and building codes are violated by property owners, local governments may generally utilize criminal enforcement mechanisms,¹⁸ civil enforcement mechanisms, equitable enforcement mechanisms, or some combination of all.¹⁹

1. The 45-Day Letter and Fines and Criminal Penalties

The opening of a housing and building code case (known as a “property maintenance case”), followed by what is known as a 45-day letter, is essentially the first tool in the Columbus toolbox to utilize in the face of any housing and building code violation. The Columbus Code authorizes the Chief of the Department of Inspections and Code to enforce all local housing and building codes, and where a violation is found, the property owner must be notified of the violation and given 45

days to correct “major violations.”²⁰ Between January of 2016 and March of 2019, 698 new code violation cases were opened in Columbus generating 45-day letters.²¹ If the violations remain uncorrected, Columbus property owners may be charged with a violation of the code, which punishments can include fines of up to \$1000, imprisonment of up to 90 days or both.²² Alternative non-criminal sanctions, including the application of liens against property, are available to address vacant and deteriorated properties where property owners are either absent, have abandoned the property, or simply refuse to remediate dangerous property conditions.

KEY VARIABLES TO EFFICACY OF 45-DAY LETTER/FINES/CRIMINAL PENALTIES

- *ACTIVE VS. ABANDONED/FRACTURED OWNERSHIP*
- *CORPORATE VS. INDIVIDUAL OWNERSHIP*
- *RESOURCES OF PROPERTY OWNER*
- *FMV OF THE PROPERTY IN RELATION TO COST TO DEMOLISH OR REMEDIATE*
- *FMV IN RELATION TO EXISTING PUBLIC/PRIVATE DEBTS AGAINST THE PROPERTY*

¹⁷ Columbus Charter Art. II §2-100 (“The consolidated government shall have and be vested with, to the same extent as if herein repeated, all rights, powers, duties, privileges and authority Columbus or Muscogee County, or both, has under the Constitution, and general and special laws of Georgia at the time of the adoption of this Charter, except as herein expressly modified.”).

¹⁸ *See e.g.*, O.C.G.A. § 36-13-12 (“The violation of any of the codes, rules, and regulations adopted by the county governing authority under this chapter is declared to be a misdemeanor. Any person violating any such codes, rules, and regulations shall be guilty of a misdemeanor. Each and every day such violation continues shall be deemed a separate offense.”).

¹⁹ *See e.g.*, O.C.G.A. § 36-13-10 (“When any violation of any of the codes, rules, and regulations which are adopted by the county governing authority under this chapter is or is proposed to be committed, the inspectors appointed under this chapter, the county attorney, some other appropriate authority of the county, or any adjacent or neighboring property owner who would be damaged by the violation, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent, correct, or abate the violation or threatened violation.”).

²⁰ Columbus, GA Code, Ch. 8 Art. V § 8-46 (“Whenever the building official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given as prescribed in this section.”).

²¹ *See* presentation of J. Hodgson to Columbus Council, March 19, 2019 available at 3:33 at https://www.youtube.com/watch?v=sC8dNmSQyt8&list=PLPhhJD-Qo-sQZ6uZZB36SWvBr_4uxxrAV&t=0s.

²² Columbus, GA Code, Ch. 8 Art. V § 8-50; Columbus, GA Code, Ch. 1 § 1-8 (“It shall be unlawful for any person to violate or fail to comply with any provision of this Code and where no specific penalty is provided therefor, the violation of any provision of this Code shall be punished by a fine not exceeding \$1,000.00, or imprisonment for a term not exceeding 90 days, or by both such fine and imprisonment.”).

Recommendations for General Housing and Building Code Application

Though precise numbers are not available, it appears that 45-day letters generate voluntary compliance in a number of cases—likely those with active owners where the property at issue has significant fair market value (“FMV”). Conversely, 45-day letters and accompanying enforcement mechanisms will often be ineffective in the face of vacant and deteriorated properties as a result of a number of variables. If the property at issue is abandoned, or perhaps subject to highly fractured ownership by multiple and diffuse heirs, then it is likely that a 45-day letter will generate no response no matter the FMV of the property or the presence of other public or private debt against the property. If the property has an FMV that is less than the cost of required remediation or demolition, the 45-day letter is unlikely to generate a response. If the property is already burdened by public or private debts that outweigh the FMV, then the 45-day letter is unlikely to generate a response.

Table 1: Property Maintenance Case/45-Day Letter Likely Outcomes Vacant Properties

Action	Ownership Status	Existing Debt Burdening Property	Fair Market Value	Likely Owner Response	Impact on Property	Next Steps Needed
45-Day Letter	Active Owner	Yes	$FMV \geq \text{Debt} + \text{Cost of Compliance}$	Voluntary Compliance	Remediation	None
45-Day Letter	Active Owner	Yes	$FMV \leq \text{Debt} + \text{cost of Compliance}$	None	Increased deterioration until public remediation	Enforcement
45-Day Letter	Abandoned Property or Highly Fractured Title	Yes	$FMV \geq \text{Debt} + \text{Cost of Compliance}$	None	Increased deterioration until public remediation	Enforcement
45-Day Letter	Abandoned Property or Highly Fractured Title	Yes	$FMV \leq \text{Debt} + \text{Cost of Compliance}$	None	Increased deterioration until public remediation	Enforcement

In light of the hypothetical outcomes depicted in Table 1 consider building on the data-driven approach employed of the Department of Inspections and Code and employ the following recommendations:

- Track responses to 45-day letters utilizing the variables outlined above to test hypothesis and to determine impact of additional variables.

- b. Determine overall voluntary compliance rate in response to 45-day letters and track compliance rate moving forward as additional enforcement tools are brought on-line.

While criminal enforcement of housing and building codes is authorized at both the state and local level in Georgia, criminal sanctions tend to be almost entirely ineffectual when imposed against vacant and deteriorated properties—the types of properties that ultimately appear on the Columbus demolition list. When such properties are owned by corporate entities, it is impossible as a practical matter to threaten a corporate entity with jail. When such properties are owned by out-of-state or otherwise absent property owners, it is similarly impossible as a practical matter to hold them criminally accountable for property conditions. Criminal sanctions imposed against property owners without the financial means to make needed repairs are harmful and unjust. Finally, the imposition of criminal penalties, no matter the owners, has no effect on the conditions of the property at issue, nor on the ownership of the property at issue.

Table 2: Enforcement Tools in Face of Non-Compliance Vacant Properties

Action	Ownership Status	Fair Market Value	Likely Owner Response	Impact on Property	Next Steps Needed
Criminal Sanction and Fine	Active Individual Owner with Resources (Local)	FMV \leq or \geq Debt + Cost of Compliance	Possible Voluntary Compliance	Remediation	None
Criminal Sanction and Fine	Active Individual Owner with Resources (Non-Local)	FMV \leq or \geq Debt + Cost of Compliance	None	Increased deterioration until public remediation	Public Remediation and Imposition of Lien
Criminal Sanction and Fine	Corporate Ownership	FMV \leq or \geq Debt + Cost of Compliance	None	Increased deterioration until public remediation	Public Remediation and Imposition of Lien
Criminal Sanction and Fine	Active Individual Owner <u>without</u> Resources	FMV \leq or \geq Debt + cost of Compliance	None	Increased deterioration until public remediation	Public Remediation and Imposition of Lien
Criminal Sanction and Fine	Abandoned Property or Highly Fractured Title	FMV \leq or \geq Debt + Cost of Compliance	None	Increased deterioration until public remediation	Public Remediation and Imposition of Lien

In light of the hypothetical outcomes depicted in Table 2 consider the following recommendations:

- c. In the face of non-compliance, utilize criminal sanctions and fines, if at all, only for vacant property owners with resources who are local (Columbus residents).
- d. Do not utilize criminal sanctions and fines as enforcement tools for non-local property owners, for corporate property owners, for local owners without resources, or in the face of abandoned properties or properties with highly fractured titles (e.g., heir properties). Focus enforcement instead on lien application and enforcement that may result in a transfer of property to responsible ownership. Redirect local owners without resources to appropriate legal aid or rehabilitation support entities/programs, or donation programs where appropriate.
- e. Consider eliminating the use of criminal sanctions all together and utilize lien enforcement for all housing and building code enforcement against vacant and deteriorated properties.

2. Lien Application and Enforcement

The creation of liens against property in the amount expended by local governments to remediate or demolish property appears to be a regular practice in local law around the state. Georgia's general lien statute does not explicitly list housing and building code enforcement liens as liens established by state law, but does appear to anticipate that liens may be created by local government ordinance.²³ Liens, like most mortgages, may be enforced in accordance with the statutes defining Sheriff's sales.²⁴ The enforcement of a local government code enforcement lien could be pursued either as a judicial enforcement action,²⁵ or as a nonjudicial sheriff's sale.

KEY VARIABLES TO EFFICACY OF GENERAL LIEN ENFORCEMENT

- *ACTIVE VS. ABANDONED/FRACTURED OWNERSHIP*
- *FMV OF THE PROPERTY IN RELATION TO VALUE OF CODE LIEN*
- *PRIORITY OF THE CODE LIEN IN RELATION TO PRE-EXISTING LIENS*

Liens resulting from a general nuisance abatement action in municipal court or created through other specific local ordinances are low in priority, behind any other existing lien against the property.²⁶ When liens are collected through a sale ordered by the courts or other public sheriff's sale, the purchaser obtains the property encumbered by all liens senior to the lien being

²³ See O.C.G.A. § 44-14-320 (a) (list of liens established in the State of Georgia including tax liens and creditor liens issued by judgment and decree) & (b) (1) (noting liens "specifically established by . . . county, municipal, or consolidated government ordinance.").

²⁴ See generally, O.C.G.A. § 9-13-161 (sheriff's sales) and O.C.G.A. § 44-14-162, unless otherwise provided in § 44-14-162 and following. As a conceptual matter the enforcement of a local government code enforcement lien could be pursued either as a judicial enforcement action, or as a nonjudicial sheriff's sale.

²⁵ See e.g., O.C.G.A. § 36-74-24 et seq. (authorizing local code enforcement boards that may impose liens against property and request local government attorney to conduct foreclosure action where, if local government prevails, all costs including attorney fees may be awarded by the court).

²⁶ O.C.G.A. § 44-14-323 ("All liens which are not regulated and fixed as to rank by this title shall rank according to date, the oldest having priority.").

Columbus Code Definitions of Unsafe Buildings

Unsafe structure. An unsafe structure is one that is found to be dangerous to life, property or safety of the public or is so damaged, decayed, deteriorated, and structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the building official finds that such structure is unsafe, unlawful or because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination²⁷, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

Dangerous structure or premises. For the purpose of this code, any structure or premises that has any of the condition or defects described [in 11 factor list including] shall be considered dangerous: [including] whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public."

Columbus, GA Code,

Ch. 8 Art. VI § 8-81.2

foreclosed, and the lien being foreclosed and any junior liens then attach to the sale proceeds.²⁷ Despite the presence of a local government housing and building code lien, if a senior lien holder forecloses on her prior existing lien, the low-priority government lien will simply be uncollectible if the sale proceeds are not sufficient to cover the debt reflected by junior liens.²⁸ At present there is very little law on this subject because local governments do not generally enforce these liens – likely a result of a lack of knowledge and expertise, the low dollar value of many such liens, and the low lien priority.

The Columbus Code authorizes the application of liens against properties in violation of code reflecting costs to the local government for nuisance abatement including, for example, the cost of weed removal,²⁹ tree removal,³⁰ mosquito and rodent control,³¹ and junk removal.³² Where, for example, despite required notices and opportunities to abate, the local government must repeatedly remediate high grass or weeds on a particular property, the costs of abatement may be assessed as a lien against the property.³³ The Columbus Code

authorizes the Finance Director to enforce and collect that lien by forcing a sale of the property, at which point the local government is authorized to purchase the property in any competitive bidding that may occur.³⁴ It is unclear whether this kind of forced sale, authorized for nuisance

²⁷ O.C.G.A. § 44-14-530.

²⁸ *Murray v. Chulak*, 250 Ga. 765, 770, 300 S.E.2d 493, 498 (1983) ("Where the holder of the senior encumbrance on realty forecloses on the property, the purchaser obtains title free of all inferior liens and any junior liens attach to the surplus of the proceeds.").

²⁹ Columbus, GA Code, Ch. 13 Art. III § 13-115.

³⁰ Columbus, GA Code, Appx A Art. VII § 4-7.1.

³¹ Columbus, GA Code, Ch. 13 Art. III § 13-112(e).

³² Columbus, GA Code, Ch. 13 Art. III § 13-167.7(D).

³³ Columbus, GA Code, Ch. 13 Art. III § 13-115.

³⁴ Columbus, GA Code, Ch. 13 Art. III § 13-115 ("If the owner fails to comply with the provisions herein, the director of inspections and code enforcement shall have the weeds and grass cut and removed, assessing a fee plus a service charge (as recommended annually by the directors of public works and finance and approved

properties generally,³⁵ has ever occurred in Columbus. To the extent a forced sale did occur, any sale purchaser would acquire the property subject to any liens senior to the local government lien including, for example, mortgages and mechanics liens.

3. Demolition Lien Enforcement

When a Columbus property owner fails to remediate or demolish a building deemed “unsafe”, “unfit for human occupancy,” “unlawful,” or “dangerous” in response to appropriate notices from the Department of Inspections and Code, then the Department may seek authorization to demolish the structure.³⁶ The process for obtaining authority to demolish includes the preparation of a complaint filed with the Columbus City Manager and the Columbus Council and served on the property owner. The City Manager may order the structure demolished, and if the property owner fails to comply with the order, the Department may proceed to demolish the structure.³⁷ All costs associated with the demolition and any boarding and vacant lot cleaning, as approved by the Columbus Council, constitute a lien against the property and such liens are filed and maintained by the clerk of the Superior Court of Muscogee County.³⁸

POSSIBLE OUTCOMES FOR GENERAL LIEN ENFORCEMENT

- *OWNER PAYS LIEN (PUBLIC RECOUPS COSTS)*
- *PRIVATE PARTY PURCHASES PROPERTY AT LIEN FORECLOSURE SALE SUBJECT TO PRE-EXISTING LIENS (PUBLIC RECOUPS COSTS; PROPERTY IN RESPONSIBLE HANDS)*
- *NO PRIVATE BIDS AT LIEN FORECLOSURE SALE; LOCAL GOVERNMENT/CLBA ACQUIRES PROPERTY SUBJECT TO PRE-EXISTING LIENS (PROPERTY IN RESPONSIBLE HANDS)*

Demolition lien enforcement is the responsibility of the Columbus Director of Finance and the Columbus Code seems to anticipate enforcement of the lien only upon private sale or conveyance of the property, or through a waiver of such liens by the City Manager.³⁹ Demolition liens collect interest at seven percent per year, and must be fully satisfied upon any transfer or conveyance of the property.⁴⁰ The current Columbus Code authorizes the City Manager to waive any demolition liens that do not exceed \$25,000, and also authorizes the City Manager to waive demolition liens, presumably of any amount, on properties transferred to the

by Columbus manager) for the work and charging the amount to the owner, and such amount shall constitute a lien against the lot, as of the date of such work, and if such amount be not paid within 30 days after the doing of the work, the finance director of the consolidated government shall issue execution against the particular real estate for which the service was rendered, and against the owner thereof, whereupon such real estate shall be levied on, advertised and sold under such execution, as in cases of levy and sale under executions for street improvement assessments due Columbus, with same procedure, including defendant's right to defense by affidavit of illegality and the right of the consolidated government to purchase at the sale.”).

³⁵ Columbus, GA Code, Ch. 13 Art. III § 13-117(b).

³⁶ Columbus, GA Code, Ch. 8 Art. III § 8-14.3(d) (“All buildings, structures, electrical, gas, mechanical or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures, or service systems are hereby declared illegal and shall be abated by repair and rehabilitation or by demolition in accordance with the procedures for requiring the abatement of unsafe buildings, as outlined in articles V and VI of this chapter.”).

³⁷ Columbus, GA Code, Ch. 8 Art. VI § 8-83.

³⁸ Columbus, GA Code, Ch. 8 Art. VI § 8-85.

³⁹ Columbus, GA Code, Ch. 8 Art. VI § 8-85.

⁴⁰ Columbus, GA Code, Ch. 8 Art. VI § 8-85.

CLBA after Columbus “actively markets the property for sale for a minimum of 12 months from the date of the waiver of the lien.”⁴¹ In the absence of a forced sale to enforce a demolition lien, it is unclear how, if at all, Columbus could ever acquire title to a property subject to a demolition lien and then transfer it to the CLBA under the current Columbus Code. It is unclear whether a forced sale to enforce a demolition lien generally, has ever occurred in Columbus. To the extent a forced sale did occur, any sale purchaser would acquire the property subject to any liens senior to the local government lien including, for example, mortgages and mechanics liens.

Recommendations for General Lien Application and Enforcement

Increased clarity and authority for enforcement of housing and building code liens, including demolitions liens, is needed in the Columbus Code. While there is reference in the Columbus Code to executions and sales for various nuisance abatement liens, it is unclear whether liens for nuisance abatement activities including public remediation of weeds, high grass, and removal of junk vehicles are filed as a matter of course. Whether to do so for occupied properties is a question beyond the scope of this memorandum, but filing and enforcing such liens against vacant properties should be considered.

While there is a practice of filing demolition liens against vacant properties post-demolition, there does not appear to be a demolition lien foreclosure process laid out or referenced in the Columbus Code. Presumably the only time demolition liens are paid are when such properties are sold on the private market—an unlikely event for most properties demolished by Columbus which are in weaker market neighborhoods, and which are often subject to public debt that outweighs the FMV of the property. While the City Manager is authorized within the Columbus Code to waive demolition liens, there does not appear to be an intervening process whereby Columbus can acquire ownership of the property in the first instance, after which it could waive remaining demolition liens.

⁴¹ Columbus, GA Code, Ch. 8 Art. VI § 8-85.

Table 3: Options for Lien Enforcement Post Public Remediation or Demolition

Vacant Properties

Action	Ownership Status	Delinquent Tax Liens or Other Liens Against Property	Fair Market Value	Likely Owner Response	Impact on Property Ownership	Recoupment of Public Expenditures	Next Steps Needed
Enforce Low-Priority Remediation or Demolition Lien	Active Owner corporate or individual	No	FMV \geq Code Lien	Pay off liens to avoid public sale	Possibly in responsible, active ownership	Yes	None
Enforce Low-Priority Remediation or Demolition Lien	Active Owner corporate or individual	Yes	FMV \geq Tax liens + Any other liens + Code Lien	Pay off liens to avoid public sale	Possibly in responsible, active ownership	Yes	None
Enforce Low-Priority Remediation or Demolition Lien	Active Owner corporate or individual	No	FMV \leq Code Liens	None	Public sale unlikely to generate bids; Columbus ownership of property	No	Public maintenance; Transfer to CLBA
Enforce Low-Priority Remediation or Demolition Lien	Active Owner corporate or individual	Yes	FMV \leq Tax liens + Any other liens + Code Lien	None	Public sale unlikely to generate bids; Columbus ownership of property	No	Consider blight condemnation to clear title; Anticipate acquisition by Columbus and transfer to CLBA
Enforce Low-Priority Remediation or Demolition Lien	Abandoned Property or Highly Fractured Title	Yes	FMV \geq Tax liens + Any other liens + Code Lien	None	Public sale likely to generate private bids; New Private Ownership	Yes	None
Enforce Low-Priority Remediation or Demolition Lien	Abandoned Property or Highly Fractured Title	Yes	FMV \leq Tax liens + Any other liens + Code Lien	None	Public sale unlikely to generate bids; Columbus ownership of property	No	Consider blight condemnation to clear title; Anticipate acquisition by Columbus and transfer to CLBA

In light of the hypothetical outcomes depicted in Table 3 consider the following recommendations:

- f. Consider filing and enforcement of non-demolition nuisance abatement liens associated with vacant and deteriorated properties. Track associated payments over time.
- g. Calculate the full amount of demolition liens (with interest) currently owed to Columbus, and track that amount over time.

- h. Calculate amount expended by Columbus on demolition cases over the last decade and amount recouped to build case for changing the current practice of non-enforcement.
- i. Ensure that liens associated with demolitions of residential Columbus properties are filed and perfected as a matter of course.
- j. Consider updating the Columbus Code to provide options and processes for demolition lien *enforcement* including lien foreclosure through to public sale, particularly for those liens already in place.
- k. Do not utilize general lien enforcement process where pre-existing liens plus the amount of the code lien outweigh FMV as the code lien is junior in priority to all pre-existing liens, and if Columbus acquires the property it will be subject to all pre-existing liens.
- l. Task Department of Inspections and Code and CLBA, working in partnership, with identifying a subset of properties for demolition lien foreclosure where the FMV is higher than the value of any debt burdening the property (including code liens and existing mortgages), and conduct public sales of such properties to recoup public expenditures and return properties to the tax rolls. Track all results of this intervention including, for example, any increases in property values to surrounding properties.
- m. Task Department of Inspections and Code and CLBA, working in partnership with identifying a subset of properties for demolition lien foreclosure that are not burdened by any private liens, where the FMV is lower than the value of any tax or code liens. Anticipate this subset of properties will be acquired by Columbus in the absence of private bids at foreclosure sale, and then transferred to the CLBA for disposition and return to productive use.

4. Judicial *in rem* Demolition Lien Enforcement

In response to the proliferation of vacant and deteriorating properties throughout the state, in 2001 the Georgia legislature authorized local governments to adopt and utilize a specific nuisance abatement process aimed at such properties—judicial *in rem* demolition lien enforcement.⁴² Judicial *in rem* demolition lien enforcement involves a court process and authorizes local governments to file a high priority lien for costs expended in demolishing

KEY VARIABLES TO EFFICACY OF JUDICIAL IN REM DEMOLITION LIEN ENFORCEMENT

- PRESENCE OF DELINQUENT PROPERTY TAXES
- FMV OF THE PROPERTY IN RELATION TO VALUE OF TAX LIENS AND VALUE OF JUDICIAL IN REM DEMOLITION LIEN
- PRESENCE OF PRE-EXISTING LIENS WHICH WILL BE EXTINGUISHED UPON TAX SALE

⁴² O.C.G.A. § 41-2-7.

nuisance properties, collectible through the property tax enforcement process.

When a local government adopts appropriate local judicial *in rem* demolition ordinances,⁴³ and identifies a property that may be a public nuisance, that local government may file a nuisance action against the property in the local municipal court.⁴⁴ Upon the Court's finding that a property is a public nuisance, the local government may proceed to repair or demolish the property, and file all associated demolition costs (including demolition, court costs, appraisal and administrative costs) as a lien against the property.⁴⁵ Although the statute expressly authorizes the local government to conduct remediation or demolition, only demolition costs are listed as appropriate costs to file as a lien. Whether the omission of remediation costs is a drafting error or intentional, as a matter of practice communities in Georgia appear to utilize this statute for the collection of demolition liens only. Judicial *in rem* demolition liens created and filed under this statutory provision and associated local ordinance are high priority, junior only to taxes, and may be collected and enforced by the tax commissioner through the tax foreclosure process.⁴⁶ Any pre-existing private liens including mortgages or mechanics liens or low-priority code liens are extinguished in the tax foreclosure process.

Recommendations for Judicial in rem Demolition Lien Enforcement

Judicial *in rem* demolition lien enforcement is utilized throughout the state of Georgia. Cities including Valdosta⁴⁷ and Atlanta⁴⁸ have adopted and utilized judicial *in rem* demolition lien ordinances. Judicial *in rem* demolition lien enforcement is not yet available in Columbus,⁴⁹ but presents a powerful tool to utilize on any properties in need of public demolition that are also subject to delinquent taxes. Utilizing the judicial *in rem* demolition lien enforcement process ensures that the lien resulting from public demolition processes is high in priority, senior to any pre-existing private liens against a property. When enforced through a judicial *in rem* tax sale, a process instituted recently in partnership with the Muscogee County Tax Commissioner and the CLBA, a

POSSIBLE OUTCOMES FOR JUDICIAL IN REM LIEN ENFORCEMENT

- **OWNER PAYS LIEN (PUBLIC RECOUPS COSTS)**
- **PRIVATE PARTY PURCHASES PROPERTY AT TAX FORECLOSURE SALE (PUBLIC RECOUPS COSTS; PROPERTY IN RESPONSIBLE HANDS)**
- **NO PRIVATE BIDS AT TAX FORECLOSURE SALE; LOCAL GOVERNMENT OR CLBA ACQUIRES PROPERTY FREE OF PRE-EXISTING LIENS JUNIOR TO TAXES (PROPERTY IN RESPONSIBLE HANDS)**

⁴³ O.C.G.A. § 41-2-9(a).

⁴⁴ O.C.G.A. § 41-2-9(a) (3).

⁴⁵ O.C.G.A. § 41-2-9(b).

⁴⁶ O.C.G.A. § 41-2-9(b)(1) ("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."). See also *Derby Properties, LLC v. Watson*, 346 Ga. App. 631, 633, 816 S.E.2d 766, 768 (2018) (tax commissioner may utilize all tax foreclosure processes available under Georgia law to collect and enforce demolition liens under O.C.G.A. § 41-2-9).

⁴⁷ See Valdosta City Code, Ch. 18, Art. VII, § 18-317.

⁴⁸ See Atlanta City Code, Appendix E, Art. V, § *et seq.* See also Center for Community Progress, *Judicial in Rem Code Enforcement and Judicial In Rem Tax Sales: Optimum Tools to Combat Vacancy and Abandonment in Atlanta* (Dec. 2014) available at https://www.communityprogress.net/filebin/Full_Atlanta_TASP_Report_Final.pdf.

⁴⁹ Columbus does appear to have at least one nuisance related code that anticipates collecting remediation and abatement costs expended by the local government through the property tax collection process. See Columbus, GA Code, Ch. 13 Art. III § 13-116 ("In case the owner of any lot or parcel of land in Columbus on which

judicial *in rem* demolition lien will a) be paid off by the purchaser at tax sale, thereby allowing Columbus to recoup its investment in the property, or b) in the absence of private purchasers, will ensure Columbus or the CLBA can acquire the property at that sale—free of any liens or encumbrances junior to taxes.

Table 4: Options for Judicial in rem Demolition Lien Enforcement Vacant Properties

Action	Ownership Status	Presence of Delinquent Tax Liens	Presence of Other Public or Private Liens	Fair Market Value	Likely Owner Response	Impact on Property Ownership	Recoupment of Public Expenditures	Next Steps Needed
Enforce High Priority Judicial <i>in rem</i> Demolition Lien	Active Owner corporate or individual	Yes	Yes	FMV \geq Tax liens + Judicial <i>in rem</i> Demolition Lien	Pay off liens to avoid public sale	Possibly in responsible, active ownership	Yes	None
Enforce High Priority Judicial <i>in rem</i> Demolition Lien	Active Owner corporate or individual	No Judicial <i>in rem</i> Demolition Lien Enforcement Not Available	N/A	N/A	N/A	N/A	N/A	Utilize general lien foreclosure processes or blight condemnation
Enforce High Priority Judicial <i>in rem</i> Demolition Lien	Abandoned Property or Highly Fractured Title	Yes	Yes	FMV \geq Tax liens + Judicial <i>in rem</i> Demolition Lien	None	Tax sale likely to generate private bids; New Private Ownership	Yes	None
Enforce Low-Priority Remediation or Demolition Lien by Forcing Sale	Abandoned Property or Highly Fractured Title	Yes		FMV \leq Tax liens + Judicial <i>in rem</i> Demolition Lien	None	Tax sale unlikely to generate bids; Columbus or CLBA ownership of property	No	Public maintenance; Transfer to CLBA

In light of the hypothetical outcomes depicted in Table 4 consider the following recommendations:

there exists an open well, cistern, dangerous hole or excavation, be a nonresident of Columbus, after public notice through the daily press or otherwise, specifying the nuisance to be abated, if such nuisance is not abated within one week after the notice, then to abate such nuisance and the cost or expenses thereof, such owner shall be assessed by Columbus as a tax against the property on which such nuisance exists and the tax so assessed shall bear interest at the rate of seven percent per annum until paid, and shall be carried on the regular tax rolls of Columbus and be collected in the manner provided for in the collection of general taxes.”).

- n. Consider adoption of a judicial *in rem* demolition lien enforcement ordinance.
- o. Consider utilizing judicial *in rem* demolition processes as a matter of course for those properties that are also subject to delinquent property tax liens, no matter the amount of any other liens against the property.
- p. Consider utilizing judicial *in rem* demolition processes as a matter of course for those properties that are also subject to pre-existing liens, no matter the amount of any other liens against the property, as the judicial *in rem* demolition lien will be superior to any pre-existing liens against the property other than tax liens.
- q. Work with nonprofit affordable housing development partners and the CLBA to identify an initial subset of vacant, deteriorated Columbus properties on the demolition list, where the demolition liens and any outstanding tax liens will outweigh the FMV of the property itself, for which there are willing nonprofit end-users. Pursue either lien foreclosure, or judicial *in rem* tax foreclosure to force a sale of such properties, at which the CLBA will likely acquire the properties in the absence of private bidders, and can then transfer the properties to affordable housing developers.

C. VACANT AND DETERIORATED PROPERTY ACQUISITION THROUGH BLIGHT CONDEMNATION⁵⁰

In concert with most states, Georgia statutes are highly prescriptive in their limited authorizations for local governments to acquire property through eminent domain or condemnation.⁵¹ Georgia law generally requires local governments to hold and restrict the use of property acquired through eminent domain to public use for a minimum of twenty years upon acquisition.⁵² In 2017 the Georgia General Assembly authorized local governments to acquire “blighted” property through the eminent domain process, for the public good of remediating blight, and requires such properties to simply be used in conformity with their current use for five years post condemnation.⁵³ In accordance with local law, upon acquisition the local government may transfer the property to a land bank authority or to other transferees who are similarly bound by the five year use requirement. A property is “blighted” within the meaning of the statute if it:

“(A) Presents two or more of the following conditions:

⁵⁰ “Condemnation” and Eminent Domain” are synonymous for purpose of this memorandum and are used synonymously in the relevant statutes. “Blight Condemnation” rather than “Blight Eminent Domain” appears to be used colloquially in Georgia local government convention.

⁵¹ See Ga. Const. Art. IX, § 2, ¶ V (“The governing authority of each county and of each municipality may exercise the power of eminent domain for any public purpose subject to any limitations on the exercise of such power as may be provided by general law. Notwithstanding the provisions of any local amendment to the Constitution continued in effect pursuant to Article XI, Section I, Paragraph IV or any existing general law, each exercise of eminent domain by a nonelected housing or development authority shall be first approved by the elected governing authority of the county or municipality within which the property is located.”).

⁵² O.C.G.A. § 22-1-2(b) (“Except as provided [for blighted property], no condemnation shall be converted to any use other than a public use for 20 years from the initial condemnation.”).

⁵³ See O.C.G.A. §§ 22-1-1(9) (A) (vi); 22-1-15 (h).

- (i) Uninhabitable, unsafe, or abandoned structures;
 - (ii) Inadequate provisions for ventilation, light, air, or sanitation;
 - (iii) An imminent harm to life or other property caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe respecting which the Governor has declared a state of emergency under state law or has certified the need for disaster assistance under federal law; provided, however, that this division shall not apply to property unless the relevant public agency has given notice in writing to the property owner regarding specific harm caused by the property and the owner has failed to take reasonable measures to remedy the harm;
 - (iv) A site identified by the federal Environmental Protection Agency as a Superfund site pursuant to 42 U.S.C. Section 9601, et seq., or environmental contamination to an extent that requires remedial investigation or a feasibility study;
 - (v) Repeated illegal activity on the individual property of which the property owner knew or should have known; or
 - (vi) The maintenance of the property is below state, county, or municipal codes for at least one year after notice of the code violation; and
- (B) Is conducive to ill health, transmission of disease, infant mortality, or crime in the immediate proximity of the property.”⁵⁴

When a local government seeks to acquire blighted property through this process, it must first file a petition in Superior Court of the county with jurisdiction over the property, seeking a judgement that the property is “blighted property.”⁵⁵ If the Court finds that the property is blighted as defined by the statute, then the Court’s resulting order must include this finding and also a statement of the property’s current approved land use, or the last authorized use if the property is vacant.⁵⁶ The local government may then proceed to seek condemnation of the property through a court process⁵⁷ which involves payment to the property owner of just compensation for the property, out of which taxes and other public and private liens may generally be satisfied.⁵⁸ Such properties, if ultimately condemned and acquired by the local government, are restricted for five years from the date of the blight order “to the same land use

⁵⁴ O.C.G.A. § 22-1-1 (1) (A-B).

⁵⁵ O.C.G.A. § 22-1-15(b).

⁵⁶ O.C.G.A. § 22-1-15(h).

⁵⁷ O.C.G.A. § 22-1-15(i).

⁵⁸ O.C.G.A. §§ 22-1-5 & 22-2-140.

as stated in the order.”⁵⁹ The blight condemnation process property conducted should result in fee simple, or clean and clear title vesting in the local government.

The City of Savannah, Georgia has been leading the way in utilizing blight condemnation in the state of Georgia.⁶⁰ Seven actions have been filed to date, including on vacant, deteriorated structures, and on vacant lots. One property has come all the way through the blight condemnation process, was condemned, and then acquired by the Savannah local government. Savannah plans to transfer the parcel to the local Land Bank Authority, which will combine the parcel with an adjacent parcel it owns and then dispose of it to an affordable housing developer.⁶¹ Columbus has not yet explored the possibility of utilizing blight condemnation on vacant and deteriorated properties throughout Columbus.

Recommendations for the Use of Blight Condemnation

Utilizing blight condemnation to acquire blighted parcels results in direct acquisition of title by the local government, upon payment of FMV to the property owner, without a public foreclosure sale. Acquiring blighted properties in this fashion allows local governments to avoid the speculative market which too often cycles such properties repeatedly through the tax sale and code violation processes, and creates opportunities for the local government or land bank to assemble properties strategically for community-driven revitalization and other neighborhood priorities. Blight condemnation can also provide an effective means to acquire properties with highly fractured title and offers a means for local government to acquire vacant and deteriorated properties with clear title—as the blight condemnation process satisfies or eliminates any pre-existing debts against the property.

Table 5: Use of Blight Condemnation Vacant Properties

Action	Ownership Status	Fair Market Value	Impact on Property Ownership	Recoupment of Public Expenditures	Next Steps Needed
Blight Condemnation	Active Owner corporate or individual	FMV ≥ Existing Public Liens	Fee Simple Title transferred to Columbus	Unlikely	Transfer to CLBA
Blight Condemnation	Abandoned Property or Highly Fractured Title	FMV ≥ Existing Public Liens	Fee Simple Title transferred to Columbus	Unlikely	Transfer to CLBA
Blight Condemnation	Active Owner corporate or individual	FMV ≤ Existing Public Liens	Fee Simple Title transferred to Columbus	Unlikely	Transfer to CLBA
Blight Condemnation	Abandoned Property or Highly Fractured Title	FMV ≤ Existing Public Liens	Fee Simple Title transferred to Columbus	Unlikely	Transfer to CLBA

⁵⁹ O.C.G.A. § 22-1-15(h).

⁶⁰ See <https://www.wsav.com/news/local-news/savannah-city-council-is-set-to-fight-blight/>.

⁶¹ Interview with Savannah Blight Condemnation counsel 8/14/19.

In light of the hypothetical outcomes depicted in Table 5 consider the following recommendations:

- r. Consider pilot blight condemnation actions on properties already demolished and subject to demolition liens that meet the definition of blighted under the statute and that would be suitable for transfer to the CLBA and affordable housing or other use to benefit the community.
- s. Consider utilizing blight condemnation to acquire vacant and deteriorated properties where taxes are paid, that are subject to other public and private debts that remain unpaid. Such properties may include properties owned by absentee owners, or properties with highly fractured title where a single owner may pay taxes but no owners take responsibility for the property itself.
- t. Consider working with nonprofit affordable housing development partners and the CLBA to identify an initial subset of Columbus vacant and deteriorated properties either subject to demolition liens or on the demolition list that, if assembled, may be good candidates for a larger scale affordable housing or other community-driven development projects (with the same use as the currently zoned property uses). Explore the public acquisition of this subset of properties utilizing blight condemnation.

III. PUBLIC ACQUISITION OF VACANT AND DETERIORATED PROPERTIES AND TRANSFER TO THE CLBA

Enforcing demolition liens, or otherwise ensuring properties that are demolished with public funds are moved to responsible private or public ownership, has not been a common practice in Columbus or throughout the state of Georgia—for good reason. Local governments are hesitant to enforce a lien through to a public sale when there is a strong likelihood that no private party will bid at the sale—particularly where liens and other debt against the property outweigh the value of the parcel itself. Local governments, including Columbus, are resistant to the possibility of taking ownership of such properties—with the attendant responsibilities. Local governments

do not typically possess significant property management, development, or disposition expertise, and are strictly governed by state statutes that limit the local governments' ability to transfer or sell properties for anything less than FMV to the highest bidder, often resulting in the exclusion of non-profit housing developers or neighborhood groups from consideration.

Columbus is authorized to acquire, hold, and dispose of real property within the bounds of state and local law. State law generally requires that local governments may sell real property to the highest bidder through sealed bids or through public auction.⁶² The Columbus Charter authorizes the Council to sell real property it owns through a sealed bid and marketing process.⁶³ Columbus does currently hold some surplus property, though it is unclear how many parcels. There is a surplus city property list on the Columbus Community Reinvestment Office website that is dated September 2010 and lists 25 properties.⁶⁴ Attempts to retrieve an updated surplus property list for purposes of this analysis were not successful.

For many local Georgia communities, including Columbus, the sheer number of vacant and deteriorated parcels in need of public demolition, and the harms they impose, have inspired local governments to consider acquiring title to the properties that local governments are already managing through code enforcement, demolition, and then lot maintenance activities. Local governments in communities with land bank authorities are particularly primed to acquire vacant, deteriorated properties and return them to productive use. The CLBA was created in the early 1990s, and its local powers and structure were updated in accordance with state law in recent years. The CLBA was largely inactive until early 2018 when, in conjunction with the retention of its first ever director and catalytic public support, the CLBA started on its way to becoming a leading land bank both in the state of Georgia and around the country. In less than a year under new and dedicated staff leadership, the CLBA has led or participated in over 40 community outreach events, and worked with the Muscogee Tax Commissioner's Office to conduct a first round of 10 judicial *in rem* tax foreclosures on vacant and deteriorated properties. Of those first 10 properties, three were redeemed (all taxes paid) prior to sale, one was purchased at sale by a private developer, and six were obtained by the CLBA. Of those six CLBA properties, some will be sold on the private market to interested buyers, some will be sold to a local affordable housing developer for low-income housing, and one will be acquired by a group of local growers for a micro-farm enterprise.⁶⁵ At least 10 additional properties will be submitted through the judicial *in rem* tax sale process in October of 2019. The CLBA is quickly gaining a reputation for community engagement, transparency, and results in returning vacant and deteriorated properties to productive, tax-producing, and community-oriented use.

⁶² O.C.G.A. § 36-37-6(a)(1) ("Except as otherwise provided in subsections (b) through (j) of this Code section, the governing authority of any municipal corporation disposing of any real or personal property of such municipal corporation shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given.").

⁶³ Columbus Charter Art. VII Ch. 5 §7-501.

⁶⁴ See <https://www.columbusga.gov/communityreinvestment/pdfs/surplus-property-city.pdf>.

⁶⁵ All CLBA acquisition and disposition data provided by CLBA.

The 2012 Georgia Land Bank Act authorizes increased flexibility where local governments transfer properties to a local land bank authority, which may then sell or dispose of such property in the discretion of the land bank authority board, subject to any local law or policy directing the use of land bank property.⁶⁶ The Columbus Code mirrors this flexibility for transfers of property owned by Columbus to the CLBA, and provides that the CLBA “shall hold, in its own name . . . all properties conveyed to it by Columbus.”⁶⁷ Upon acquisition of properties transferred to the CLBA by Columbus, the Code states that “[t]he acquisition and disposal of property by the authority shall not be governed or controlled by any regulations or laws of Columbus unless specifically provided.”⁶⁸ In discerning sales price and end use of CLBA property, the CLBA retains full discretion to decide the appropriate sales prices, and must generally distribute property for public purposes, or in partnership to neighborhood nonprofit low-income housing providers or to other organizations that intend to produce low-moderate income housing.⁶⁹

With the revived leadership of the CLBA, the possibilities for responsible acquisition, maintenance, and disposition of vacant and deteriorated properties into productive use in Columbus have increased. The CLBA, like land banks throughout Georgia, is designed to address the very properties that cause the most harm to neighbors and neighborhoods, and is granted significant flexibility and authority by state statute to receive transfers of properties from local governments, and then to dispose of those properties in accordance with local community goals. For the first time in decades, if Columbus decides to move forward with enforcement of demolition liens or blight condemnation that may result in public acquisition of properties post-demolition, Columbus has an appropriate tool in its toolbox in the CLBA to manage and dispose of those properties and return them to productive use.

Recommendations for CLBA Acquisition, Maintenance, and Disposition of Surplus Vacant, Deteriorated Properties

Consider the following recommendations to achieve a manageable, pilot-basis CLBA program or programs for the acquisition, management, and disposition of surplus Columbus properties.

- u. Consider adding to any amnesty program an option where owners of properties subject to a demolition lien may donate that property to the CLBA, subject to CLBA identified criteria, and then ensure the City Manager waives the demolition lien upon such donation. Depending on community interest and capacity, begin by offering

⁶⁶ O.C.G.A. § 48-4-108 (c)(2)(“Notwithstanding any other law to the contrary, a municipal corporation, county, or consolidated government may transfer to a land bank real property and interests in real property of the municipal corporation, county, or consolidated government on such terms and conditions and according to such procedures as determined by the municipal corporation, county, or consolidated government, so long as the real property is located within the geographical boundaries of the land bank.”).

⁶⁷ Columbus, GA Code, Ch. 2 Art. XIII § 2-186 (a).

⁶⁸ Columbus, GA Code, Ch. 2 Art. XIII § 2-186 (c).

⁶⁹ Columbus, GA Code, Ch. 2 Art. XIII § 2-187(e).

donation/lien waiver program to select group of properties for which CLBA has an identified end use.

- v. Consider amending the Columbus, GA Code, Ch. 8 Art. VI § 8-85 to remove the requirement that the City Manager may only waive demolition liens on properties transferred to the CLBA after Columbus “actively markets the property for sale for a minimum of 12 months from the date of the waiver of the lien.” The requirement that Columbus actively market a property it owns after waiving a demolition lien and before transferring the property to the CLBA is unnecessary and likely unachievable given Columbus does not have an active real estate development and marketing department for vacant and deteriorated properties.
- w. Consider amending Columbus Code Ch. 2 Art. XIII § 2-187 so that it is silent as to permissible end uses for CLBA transferred properties, rather than the current apparent limitation to low-income housing development. While low-income housing development is an important goal, many properties acquired through the code enforcement process may not be suitable for low-income housing development. End uses for properties transferred to the CLBA by Columbus should simply be subject to existing and robust CLBA policies and procedures.
- x. Considering amending Columbus Code Ch. 8 Art. VI § 8-85 to remove references to 1991 Georgia Land Bank Act, and include references to the 2012 Georgia Land Bank Act.
- y. Upon adoption of a judicial *in rem* demolition lien ordinance, task Department of Inspections and Code and CLBA with identifying and then including a small number of properties subject to judicial *in rem* demolition liens in the next scheduled judicial *in rem* tax sale process already established by the Muscogee County Tax Commissioner and the CLBA. Track and celebrate outcomes for such properties in the hands of the CLBA, new private tax sale purchasers, or otherwise.
- z. Consider development of a pilot program or programs for transfer of a small subset of properties acquired by Columbus through demolition lien enforcement or blight condemnation to the CLBA. The pilot program or programs should be developed in partnership with the Department of Inspections and Code and the Community Reinvestment Office to focus initially on properties with identifiable end uses like affordable housing or green space, properties complimentary to existing land assemblage or redevelopment goals, or properties likely to generate revenue for the CLBA upon disposition.

IV. CONCLUSION

Columbus has adopted appropriate housing and building codes and minimum standards in accordance with Georgia law, and the Department of Inspections and Code regularly utilizes its authority to seek Code compliance from property owners. It appears that the majority of Columbus property owners ensure their properties are kept up to code, and there is a large number of property owners who comply with the code with a simple notice from the Department of Inspections and Code. Where property owners fail to comply, or are unresponsive or otherwise, and where the property is “unsafe,” “unfit for human occupancy,” “unlawful,” or “dangerous” within the meaning of the Columbus Code, the Department of Inspections and Code moves forward with appropriate demolition processes and regularly records demolition liens against demolished properties. Judicial *in rem* demolition lien enforcement, which would ensure demolition liens maintain priority in front of all other liens except taxes, is not yet authorized or utilized in Columbus, and Columbus has not yet explored acquisition of properties it has demolished, or that are slated for demolition, through blight condemnation. If and when Columbus does acquire vacant and deteriorated properties through code lien enforcement, judicial *in rem* demolition lien enforcement, blight condemnation or otherwise, the CLBA, with adequate support, is positioned to manage and dispose of such properties into productive use.

While local Columbus law and policy authorizes Columbus to remediate or demolish a vacant and deteriorated property, there does not appear to be a single mechanism or practice *in use* that would allow Columbus to then enforce any resulting lien and force a transfer of the property. If Columbus never enforces demolition liens, or forces a transfer of such properties to responsible hands, then Columbus will continue to spend thousands of dollars per parcel to accomplish demolitions without ever recouping those funds. The demolished parcels will simply sit idle, collecting interest on uncollectible liens and burrowing deeper, and deeper under water until the debt far outweighs any FMV. Other vacant and deteriorated properties owned by speculative or irresponsible owners will continue to deteriorate—because without the threat of losing property, there is not sufficient leverage to motivate some to adequately care for property. If Columbus decides to adopt appropriate ordinances and otherwise to access various code enforcement tools including judicial *in rem* lien enforcement, or to accomplish blight condemnation, Columbus policy makers will then need to determine on a case-by-case basis which tool to apply to which property based on a series of important variables described in this memorandum.

If Columbus is not willing to take ownership of at least a small subset of properties post demolition, then the status quo will likely not change. **If Columbus is willing to acquire title to at least a small subset of properties post demolition, and seek to dispose of them into productive use, there are a variety of possible and likely improvements to the status quo**

including a) vacant lots post demolition returned to active, productive, tax-producing use, b) increased property values in surrounding parcels and neighborhoods, c) possible recoupment of taxpayer expended funds for demolition and otherwise upon disposition of parcels to responsible end users, and d) an increase in voluntary compliance across the code enforcement spectrum as property owners learn Columbus will actually enforce demolition liens and force transfers of dangerous property when property owners refuse to comply with codes. This memorandum is designed to serve as a resource and an analytic tool for Columbus leaders seeking to determine next steps in Columbus housing and building code enforcement, and the application of specific tools to specific properties.

Community Progress is honored to be a part of the neighborhood stabilization conversation in Columbus and to offer the observations and recommendations contained in this memorandum. In all instances, these recommendations are offered based on our national and “outsider” experience, and are meant to inspire consideration, discussion, augmentation, deletion, and otherwise by Columbus leaders. Community Progress looks forward to supporting the efforts of Columbus and the CLBA in the months and years to come.

APPENDIX A

Collated List of Recommendations

- a. Track responses to 45-day letters utilizing the variables outlined above to test hypothesis and to determine impact of additional variables.
- b. Determine overall voluntary compliance rate in response to 45-day letters and track compliance rate moving forward as additional enforcement tools are brought on-line.
- c. In the face of non-compliance, utilize criminal sanctions and fines, if at all, only for vacant property owners with resources who are local (Columbus residents).
- d. Do not utilize criminal sanctions and fines as enforcement tools for non-local property owners, for corporate property owners, for local owners without resources, or in the face of abandoned properties or properties with highly fractured titles (e.g., heir properties). Focus enforcement instead on lien application and enforcement that may result in a transfer of property to responsible ownership. Redirect local owners without resources to appropriate legal aid or rehabilitation support entities/programs, or donation programs where appropriate.
- e. Consider eliminating the use of criminal sanctions all together and utilize lien enforcement for all housing and building code enforcement against vacant and deteriorated properties.
- f. Consider filing and enforcement of non-demolition nuisance abatement liens associated with vacant and deteriorated properties. Track associated payments over time.
- g. Calculate the full amount of demolition liens (with interest) currently owed to Columbus, and track that amount over time.
- h. Calculate amount expended by Columbus on demolition cases over the last decade and amount recouped to build case for changing the current practice of non-enforcement.
- i. Ensure that liens associated with demolitions of residential Columbus properties are filed and perfected as a matter of course.
- j. Consider updating the Columbus Code to provide options and processes for demolition lien *enforcement* including lien foreclosure through to public sale, particularly for those liens already in place.

- k. Do not utilize general lien enforcement process where pre-existing liens plus the amount of the code lien outweigh FMV as the code lien is junior in priority to all pre-existing liens, and if Columbus acquires the property it will be subject to all pre-existing liens.
- l. Task Department of Inspections and Code and CLBA, working in partnership, with identifying a subset of properties for demolition lien foreclosure where the FMV is higher than the value of any debt burdening the property (including code liens and existing mortgages), and conduct public sales of such properties to recoup public expenditures and return properties to the tax rolls. Track all results of this intervention including, for example, any increases in property values to surrounding properties.
- m. Task Department of Inspections and Code and CLBA, working in partnership with identifying a subset of properties for demolition lien foreclosure that are not burdened by any private liens, where the FMV is lower than the value of any tax or code liens. Anticipate this subset of properties will be acquired by Columbus in the absence of private bids at foreclosure sale, and then transferred to the CLBA for disposition and return to productive use.
- n. Consider adoption of a judicial *in rem* demolition lien enforcement ordinance.
- o. Consider utilizing judicial *in rem* demolition processes as a matter of course for those properties that are also subject to delinquent property tax liens, no matter the amount of any other liens against the property.
- p. Consider utilizing judicial *in rem* demolition processes as a matter of course for those properties that are also subject to pre-existing liens, no matter the amount of any other liens against the property, as the judicial *in rem* demolition lien will be superior to any pre-existing liens against the property other than tax liens.
- q. Work with nonprofit affordable housing development partners and the CLBA to identify an initial subset of vacant, deteriorated Columbus properties on the demolition list, where the demolition liens and any outstanding tax liens will outweigh the FMV of the property itself, for which there are willing nonprofit end-users. Pursue either lien foreclosure, or judicial *in rem* tax foreclosure to force a sale of such properties, at which the CLBA will likely acquire the properties in the absence of private bidders, and can then transfer the properties to affordable housing developers.
- r. Consider pilot blight condemnation actions on properties already demolished and subject to demolition liens that meet the definition of blighted under the statute and that would be suitable for transfer to the CLBA and affordable housing or other use to benefit the community.

- s. Consider utilizing blight condemnation to acquire vacant and deteriorated properties where taxes are paid, that are subject to other public and private debts that remain unpaid. Such properties may include properties owned by absentee owners, or properties with highly fractured title where a single heir may pay taxes but no heirs take responsibility for the property itself.
- t. Consider working with nonprofit affordable housing development partners and the CLBA to identify an initial subset of Columbus vacant and deteriorated properties either subject to demolition liens or on the demolition list that, if assembled, may be good candidates for a larger scale affordable housing or other community-driven development projects (with the same use as the currently zoned property uses). Explore the public acquisition of this subset of properties utilizing blight condemnation.
- u. Consider adding to any amnesty program an option where owners of properties subject to a demolition lien may donate that property to the CLBA, subject to CLBA identified criteria, and then ensure the City Manager waives the demolition lien upon such donation. Depending on community interest and capacity, begin by offering donation/lien waiver program to select group of properties for which CLBA has an identified end use.
- v. Consider amending the Columbus, GA Code, Ch. 8 Art. VI § 8-85 to remove the requirement that the City Manager may only waive demolition liens on properties transferred to the CLBA after Columbus “actively markets the property for sale for a minimum of 12 months from the date of the waiver of the lien.” The requirement that Columbus actively market a property it owns after waiving a demolition lien and before transferring the property to the CLBA is unnecessary and likely unachievable given Columbus does not have an active real estate development and marketing department for vacant and deteriorated properties.
- w. Considering amending Columbus Code Ch. 2 Art. XIII § 2-187 so that it is silent as to permissible end uses for CLBA transferred properties, rather than the current apparent limitation to low-income housing development. While low-income housing development is an important goal, many properties acquired through the code enforcement process may not be suitable for low-income housing development. End uses for properties transferred to the CLBA by Columbus should simply be subject to existing and robust CLBA policies and procedures.
- x. Considering amending Columbus Code Ch. 8 Art. VI § 8-85 to remove references to 1991 Georgia Land Bank Act, and include references to the 2012 Georgia Land Bank Act.
- y. Upon adoption of a judicial *in rem* demolition lien ordinance, task Department of Inspections and Code and CLBA with identifying and then including a small number of

properties subject to judicial *in rem* demolition liens in the next scheduled judicial *in rem* tax sale process already established by the Muscogee County Tax Commissioner and the CLBA. Track and celebrate outcomes for such properties in the hands of the CLBA, new private tax sale purchasers, or otherwise.

- z. Consider development of a pilot program or programs for transfer of a small subset of properties acquired by Columbus through demolition lien enforcement or blight condemnation to the CLBA. The pilot program or programs should be developed in partnership with the Department of Inspections and Code and the Community Reinvestment Office to focus initially on properties with identifiable end uses like affordable housing or green space, properties complimentary to existing land assemblage or redevelopment goals, or properties likely to generate revenue for the CLBA upon disposition.

APPENDIX B

Decision Tree: Tools to Address Vacant and Deteriorated Properties

Property Status	Ownership Status	FMV	Stabilization and Revitalization Goal	Appropriate Tool(s)	Likely Outcome	Recoup Public Expenditures	Public Acquisition of Property	Likely Quality of Title Post Enforcement
Vacant Property in Violation of Housing and Building Code	Active Ownership	FMV ≥ Public/Private Debt	Stop property decline; stabilize neighborhood; strengthen property values	45-Day Letter	Voluntary Compliance	✗	✗	Stable in hands of original owner
Vacant Property in Violation of Housing and Building Code	Abandoned Property or Highly Fractured Title	FMV ≥ Public/Private Debt	Stop property decline; stabilize neighborhood; strengthen property values	General Lien application and enforcement	Public Sale likely to generate bids: New Private ownership of property	✓	✗	Subject to liens senior to code lien
Vacant Property in Violation of Housing and Building Code (pre-demolition)	Abandoned Property or Highly Fractured Title	FMV ≤ Public/Private Debt	Stop property decline; stabilize neighborhood; strengthen property values	General Lien application and enforcement	Public Sale unlikely to generate bids: Columbus ownership	✗	✓	Subject to liens senior to code lien
Vacant Property in Violation of Housing and Building Code (post-demolition)	Abandoned Property or Highly Fractured Title	FMV ≥ Public/Private Debt	Transfer to responsible ownership; Stabilize neighborhood; strengthen property values	General Lien application and enforcement	Public Sale likely to generate bids: New Private ownership of property	✓	✗	Subject to liens senior to code lien
Tax Delinquent Vacant Property in Violation of Housing and Building Code (post-demolition)	Abandoned Property or Tax Delinquent Highly Fractured Title	FMV ≥ Tax Liens + Judicial in rem Demolition Lien	Transfer to responsible ownership; Stabilize neighborhood; strengthen property values	Judicial <i>in rem</i> Demolition Lien Enforcement	Tax sale likely to generate private bids; New Private Ownership	✓	✗	Clear; all liens junior to taxes extinguished in tax sale
Tax Delinquent Vacant Property in Violation of Housing and Building Code (post-demolition)	Abandoned Property or Tax Delinquent Highly Fractured Title	FMV ≤ Tax Liens + Judicial in rem Demolition Lien	Transfer to responsible ownership; Stabilize neighborhood; strengthen property values	Judicial <i>in rem</i> Demolition Lien Enforcement	Tax sale unlikely to generate bids; Columbus or CLBA ownership of property	✗	✓	Clear; all liens junior to taxes extinguished in tax sale
Vacant Property in Violation of Housing and Building Code (Meets Definition of Blight under Blight Condemnation Statute)	Abandoned Property or Highly Fractured Title	FMV ≥ Public/Private Debt	Take out of speculative investment cycle; Land assemblage; acquisition of land for affordable housing or other public purposes	Blight Condemnation	Fee Simple Transfer to Columbus and then to CLBA	✗	✓	Clear, fee simple
Vacant Property in Violation of Housing and Building Code (Meets Definition of Blight under Blight Condemnation Statute)	Abandoned Property or Highly Fractured Title	FMV ≤ Public/Private Debt	Take out of speculative investment cycle; Land assemblage; acquisition of land for affordable housing or other public purposes	Blight Condemnation	Fee Simple Transfer to Columbus and then to CLBA	✗	✓	Clear, fee simple



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