AN ORDINANCE BY

03-O -1356

COUNCILMEMBER NATALYN ARCHIBONG

AN ORDINANCE TO AMEND SECTION 74-171 OF THE CITY CODE OF ATLANTA SO AS TO DECLARE THE ILLEGAL SALE OF ALCOHOL CONDUCTED IN CERTAIN BUILDINGS, STRUCTURES AND DWELLINGS AS A PUBLIC NUISANCE; AND FOR OTHER PURPOSES.

WHEREAS, the illegal sale of alcohol in buildings, structures and dwellings in the city create a source of illegal criminal activity which endangers the public health, safety and welfare of the citizens of Atlanta.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

SECTION 1:

That Chapter 74, Article V, Section 10-171, of the City of Atlanta Code of Ordinances which currently reads as follows:

Sec. 74-171. Buildings used to sell or dispose of illegal controlled substances.

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

Conviction means legal adjudication of guilt in a court having jurisdiction and the exhaustion of all direct appeals.

Drug crime means an act which is a violation of O.C.G.A. tit. 16, ch. 13, art. 2 (O.C.G.A. § 16-13-20 et seq.) known as the Georgia Controlled Substances Act.

Dwelling unit means any portion of a building used, intended or designed as a separate abode and used, intended or designed for living, sleeping, cooking and eating therein.

Dwellings, buildings or structures means any building or structure or part thereof used and occupied for human habitation or commercial, industrial or business uses, or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design.

Occupied means any person living in, using or having legal possession of a dwelling, except that a temporary guest or a trespasser shall not be considered an occupant.
Owner means any person or persons having any individual, joint or common title or interest in real property defined by the laws of the state as a legal or equitable estate or interest.

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

(b) Nuisance declared. The city finds that the sale and purchase of illegal controlled substances is being conducted in certain buildings, structures and dwellings in the city, creating a source of illegal criminal activity which endangers the public health, safety and welfare of the citizens of the city. Therefore, buildings, structures and dwelling units where illegal drugs are being sold, stored or used are declared a public nuisance.

(c) Abatement. Where a house, dwelling unit, building or structure is vacant, dilapidated and more than 50 percent deteriorated and where a report is made by the police department or any law enforcement agency, or by five or more residents of the city, that illegal drugs are being sold, stored or used in such house, dwelling unit, building or structure, the chief of police shall notify the commissioner of housing and/or the commissioner of planning and development of such reports, and such commissioner shall proceed to exercise those procedures set out in sections 30 through 33 of the city housing code and O.C.G.A. §§ 41-2-7—41-2-17 to have the building demolished or to otherwise abate the public nuisance.

(d) Notice.

(1) Where a house, dwelling unit, building or structure is vacant but less than 50 percent deteriorated or occupied and being used for illegal drug activity, the chief of police, upon the chief's own initiative, or after receiving five complaints from residents, shall serve a cease and desist notice upon the owners and tenants of the house, dwelling unit, building or structure informing such owner or tenant that such property may be subject to seizure if the illegal drug activity does not cease. Such notice shall be in substantially the form as exhibit A, attached to the ordinance from which this section is derived.

(2) Upon the first conviction of illegal drug activity from a house, dwelling unit, building or structure, the chief of police will serve a second cease and desist notice and inform the owner and tenant that upon three convictions, the property will be referred to municipal court for abatement of the nuisance, which may result in seizure of the property. Such notice shall be in substantially the form as exhibit B, attached to the ordinance from which this section is derived.

(3) Upon two convictions, the chief of police will refer the case to the solicitor, who shall serve a letter of notice of intent to declare the property a public nuisance in municipal court and seek to abate the public nuisance. Such notice shall be in substantially the form as exhibit C, attached to the ordinance from which this section is derived.

(4) Upon three convictions, the solicitor will file a complaint in municipal court to abate the nuisance and cause to be served upon the owner, tenant and/or occupant of the building a rule nisi requiring the owner, tenant and/or occupant to show cause on a date certain why the nuisance should not be abated.

(e) Remedy. In abating the public nuisance, the municipal court may order:

(1) That the property be vacated if the building, structure or dwelling is 50 percent deteriorated.
(2) That the property be voluntarily vacated by a date certain if the building is less than 50 percent deteriorated.
(3) That a landlord initiate dispossessory proceedings to evict tenants engaged in illegal drug activity.
(4) That the property be voluntarily demolished if the building, structure or dwelling is 50 percent deteriorated.
(5) That the property be involuntarily demolished if the building, structure or dwelling is 50 percent deteriorated.
(6) That the property be voluntarily cleaned and closed where it is less than 50 percent deteriorated.
(7) That the property be involuntarily cleaned and closed where it is less than 50 percent deteriorated.
(8) That the property be voluntarily transferred to the City of Atlanta/Fulton County land bank authority, provided that the land bank authority agrees to abate the nuisance.
(9) That the property be referred by the chief of police to the United States attorney for possible forfeiture pursuant to 21 USC 881.
(10) Any other remedy deemed appropriate in abating nuisances in the state.

(f) Exceptions.

(1) Those buildings, dwelling units and structures that are subject to the city's historic preservation ordinance, shall be exempt from this section to the extent that demolition is authorized.
(2) Those buildings which have been granted a nonconforming use pursuant to the zoning ordinance of the city shall not lose such nonconforming use while the property is subject to the process authorized by this section.
(3) Public property such as that owned by the city housing authority is exempt from this section only to the extent that seizure of the property is authorized.

is amended by deleting said section and substituting in lieu thereof the following:

Sec. 74-171. Buildings used to sell or dispose of illegal controlled substances **or illegal sale of alcohol.**

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

Conviction means legal adjudication of guilt in a court having jurisdiction and the exhaustion of all direct appeals.

Drug crime means an act which is a violation of O.C.G.A. tit. 16, ch. 13, art. 2 (O.C.G.A. § 16-13-20 et seq.) known as the Georgia Controlled Substances Act.

Dwelling unit means any portion of a building used, intended or designed as a separate abode and used, intended or designed for living, sleeping, cooking and eating therein.

Dwellings, buildings or structures means any building or structure or part thereof used and occupied for human habitation or commercial, industrial or business uses, or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design.

Occupied means any person living in, using or having legal possession of a dwelling, except that a temporary guest or a trespasser shall not be considered an occupant.

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

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

(b) Nuisance declared. The city finds that the sale and purchase of illegal controlled substances **and the illegal sale of alcohol** is being conducted in certain buildings, structures and dwellings in the city, creating a source of illegal criminal activity, which endangers the public health, safety and welfare of the citizens of the city. Therefore, buildings, structures and dwelling units where illegal drugs are being sold stored or used, or the illegal sale of alcohol is being conducted, are declared a public nuisance.

(c) Abatement. Where a house, dwelling unit, building or structure is vacant, dilapidated and more than 50 percent deteriorated and where a report is made by the police department or any law enforcement agency, or by five or more residents of the city, that illegal drugs are being sold, stored or used, or **that the illegal sale of alcohol is occurring** in such house, dwelling unit, building or structure, the chief of police shall notify the commissioner of housing and/or the commissioner of planning and development of such reports, and such commissioner shall proceed to exercise those procedures set out in sections 30 through 33 of the city housing code and O.C.G.A. §§ 41-2-7—41-2-17 to have the building demolished or to otherwise abate the public nuisance.

(d) Notice.

(1) Where a house, dwelling unit, building or structure is vacant but less than 50 percent deteriorated or occupied and being used for illegal drug activity, **or the illegal sale of alcohol** the chief of police, upon the chief's own initiative, or after receiving five complaints from residents, shall serve a cease and desist notice upon the owners and tenants of the house, dwelling unit, building or structure informing such owner or tenant that such property may be subject to seizure if the illegal drug activity does not cease. Such notice shall be in substantially the form as exhibit A, attached to the ordinance from which this section is derived.

(2) Upon the first conviction of illegal drug activity or **illegal sale of alcohol** from a house, dwelling unit, building or structure, the chief of police will serve a second cease and desist notice

and inform the owner and tenant that upon three convictions, the property will be referred to municipal court for abatement of the nuisance, which may result in seizure of the property. Such notice shall be in substantially the form as exhibit B, attached to the ordinance from which this section is derived.

(3) Upon two convictions, the chief of police will refer the case to the solicitor, who shall serve a letter of notice of intent to declare the property a public nuisance in municipal court and seek to abate the public nuisance. Such notice shall be in substantially the form as exhibit C, attached to the ordinance from which this section is derived.

(4) Upon three convictions, the solicitor will file a complaint in municipal court to abate the nuisance and cause to be served upon the owner, tenant and/or occupant of the building a rule nisi requiring the owner, tenant and/or occupant to show cause on a date certain why the nuisance should not be abated.

(e) Remedy. In abating the public nuisance, the municipal court may order:

(1) That the property be vacated if the building, structure or dwelling is 50 percent deteriorated.
(2) That the property be voluntarily vacated by a date certain if the building is less than 50 percent deteriorated.
(3) That a landlord initiate dispossessory proceedings to evict tenants engaged in illegal drug activity **or the illegal sale of alcohol**.
(4) That the property be voluntarily demolished if the building, structure or dwelling is 50 percent deteriorated.
(5) That the property be involuntarily demolished if the building, structure or dwelling is 50 percent deteriorated.
(6) That the property be voluntarily cleaned and closed where it is less than 50 percent deteriorated.
(7) That the property be involuntarily cleaned and closed where it is less than 50 percent deteriorated.
(8) That the property be voluntarily transferred to the City of Atlanta/Fulton County land bank authority, provided that the land bank authority agrees to abate the nuisance.
(9) That the property be referred by the chief of police to the United States attorney for possible forfeiture pursuant to 21 USC 881.
(10) Any other remedy deemed appropriate in abating nuisances in the state.

(f) Exceptions.

(1) Those buildings, dwelling units and structures that are subject to the city's historic preservation ordinance, shall be exempt from this section to the extent that demolition is authorized.
(2) Those buildings which have been granted a nonconforming use pursuant to the zoning ordinance of the city shall not lose such nonconforming use while the property is subject to the process authorized by this section.