

AN ORDINANCE

**AN ORDINANCE TO AMEND
THE CODE OF DEKALB COUNTY,
AS REVISED 1988, CHAPTER 18, TO PROVIDE FOR ADOPTION OF THE
INTERNATIONAL PROPERTY MAINTENANCE CODE,
AND FOR OTHER PURPOSES.**

WHEREAS, the Governing Authority of DeKalb County is tasked with the protection of the County’s health, safety, and general welfare; and

WHEREAS, the adoption of the International Property Maintenance Code helps to ensure the safety of property, buildings and structures in the County; and

WHEREAS, O.C.G.A. § 8-2-20 *et. seq.* authorizes counties to adopt and enforce the International Property Maintenance Code;

WHEREAS, O.C.G.A. § 41-2-9(f) provides that counties have the power to define and declare nuisances and cause their removal and abatement by summary proceeding or otherwise;

NOW, THEREFORE, be it ordained by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 18 of the Code of DeKalb County, as Revised 1988, be and the same is hereby amended to add a new article to read as follows:

PART I. ENACTMENT

By amending Section 18 of the Code of DeKalb County as revised 1988, to add new reserved sections and a new article to read as follows:

Secs. 18-166 -18-169. Reserved.

**Article VIII.
International Property Maintenance Code**

Sec. 18-170. Applicability.

The 2018 edition of the International Property Maintenance Code (hereinafter “IPMC”), promulgated pursuant to O.C.G.A. § 8-2-25, as adopted and amended by the Georgia Department of Community Affairs is adopted by reference, subject to all exceptions, amendments and modifications contained in this article. Copies of the IPMC shall be maintained and available in the planning department and on the County’s website. In the event this article conflicts with any other provision of the Code, the more restrictive provision shall govern. The provisions of the IPMC shall be considered minimum requirements to protect the health, safety and welfare of the County’s citizens.

Section 18-171. Amendments to IPMC.

The following shall be considered amendments, changes, exceptions, or additions to the IPMC adopted in Section 18-170:

- (a) Section 103.1 shall be deleted in its entirety and replaced in lieu thereof as follows:

Section 103.1 Code Compliance Administration.

103.1 General. The Code Compliance Department exists within DeKalb County and the executive official in charge of that department or his/her designee shall be known as the *Code Official*.

- (b) Section 104.3 shall be amended by the addition of the following:

The *Code Official’s* recourse shall include, but is not limited to, seeking issuance of a search warrant or inspection warrant from the magistrate, state or superior court of the County.

- (c) Section 106.3 shall be deleted in its entirety and replaced in lieu thereof as follows:

1. All notice of violations or orders issued by the County must contain specific language which tells the owner or person cited in the notice of violation or order of the consequences of a failure to appeal such notice of violation or order as detailed in this section. If such specific notice is not included in the notice of violation or order, the remaining provisions of this section cannot be used or enforced by the County.
2. Any person failing to timely appeal a notice of violation or order in accordance with Section 107 shall be deemed to have admitted all facts contained in the notice of violation or order. The failure to appeal the order or notice of violation means that

the person named in the notice of violation or order has also admitted the existence of the violation as a matter of law.

3. Failure to appeal also means that the person named in the notice of violation or order has agreed to allow the County or its agents to enter the property at issue, without any further notice other than the notice required in Section 107.3 to take remedial action to correct the admitted violation.
4. Any action taken by the County on such premises shall be charged against the real estate as a lien upon such real estate. The lien amount shall be the cost of repair, alteration or improvement and all other costs necessarily associated with actions correcting the violation. The lien provided for herein shall attach to the real property upon the filing of a certified copy of the correction order required by section 107.2 and a sworn statement of costs by the *Code Official* in the Office of the Superior Court of DeKalb County, Georgia. The Clerk of the Superior Court shall record and index such certified copy of the correction order and sworn statement of costs in the deed records of the County and enter a lien on the general execution docket.

- (d) Section 107.3 shall be deleted in its entirety and replaced in lieu thereof as follows:

107.3 Method of Service. Such notice shall be deemed to be properly served if a copy hereof is: delivered personally, or sent by certified first class mail addressed to the last known address of the owner as indicated in the tax records of DeKalb County tax commissioner. If notice is returned showing that the letter was not delivered, a copy hereof shall be posted in a conspicuous place in or about the property or structure affected by such notice. Such notice shall be simultaneously posted in a conspicuous place on the County's website.

- (e) Section 111 shall be deleted in its entirety and replaced in lieu thereof as follows:

Section 111 Means of Appeal.

111.1 Hearing Officer. The *Hearing Officer* is the individual permitted to hear appeals of decisions, notices, and orders.

111.2 Application for appeal. Any Aggrieved person(s), as defined in 14-1 of the Code (hereinafter "applicant"), shall have a right to appeal a final decision of the *Code Official* or a notice or order issued under this code to the *Hearing Officer*, provided that a written application for appeal is filed within 15 calendar days after

the day the decision, notice or order was mailed to the address given by the applicant. An application for appeal shall be based on a claim that a section of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not apply to the situation, or the requirements of this code are adequately satisfied by other means. The application for appeal shall identify all objections or exceptions to the decision, notice or order and include a statement describing what efforts were made to resolve the matter and contain a mailing address for receipt of future notices and decisions of the *Hearing Officer*. At his/her discretion, the applicant may provide an email address for duplicate notices set forth in this section.

111.2.1 Hearing Notice. Upon receipt of a timely and proper notice of appeal, the *Code Official* shall notify the applicant, in writing, of the date, time and place where a hearing will be held. The hearing shall be held before the *Hearing Officer* within thirty (30) calendar days of the date the notice of appeal is filed with the *Code Official*, but no sooner than five (5) calendar days after notice is sent to the applicant or holder at the address given by the applicant pursuant to the requirements of subsection (a). The *Code Official* shall transmit to the *Hearing Officer* all County documents or materials constituting the record of the action or proceedings below.

111.2.2 Procedure. In all hearings pursuant to this section, the following procedures shall govern:

- (1) A person serving as a *Hearing Officer* shall be admitted to the practice of law in the State of Georgia and an active member of the State Bar of Georgia, with a minimum of five (5) years of experience in the practice of law.
- (2) A pool of at least four (4) *Hearing Officers* shall be established to hear all appeals under this section. The pool of hearing officers shall be established in the same manner as the hearing officer pool established under appendix B of article XVI of this Code and individuals serving as hearing officers under this chapter shall be compensated in the same manner as those individuals who serve as hearing officers in appeal hearings under article XVI of this Code. In no event shall the hearing officer be a current appointed or elected official or employee of DeKalb County or have been an official or employee of DeKalb County within two (2) years prior to serving as a hearing officer.
- (3) The *Hearing Office* for each proceeding will be selected on a rotating basis based on availability.

(4) The proceeding before the *Hearing Officers* shall be open to the public, shall be recorded, and all documents and other materials considered by the *Hearing Officer(s)* shall be preserved as the record of the proceedings. Any member of the public may submit written documents or written statements at the hearing, which shall be considered by the *Hearing Officer*. The record of the proceedings shall be preserved for not less than one hundred fifty (150) calendar days after the hearing and in accordance with the record retention requirements of law.

(5) Any alleged violations or misconduct levied against the applicant and scheduled for a hearing before the *Hearing Officer(s)* shall be read completely to the applicant at the commencement of the hearing, unless waived by the applicant.

(6) The *Hearing Officer(s)* may receive evidence regarding the alleged violations or misconduct as filed against the applicant. Decisions of the *Hearing Officer(s)* are to be supported by the evidence accepted and admitted during the hearing.

(7) The county shall bear the burden of proof. The standard of proof shall be by a preponderance of the evidence, but these hearings are administrative in nature and the *Hearing Officer* is not bound by strict courtroom procedures or the rules of civil procedure or evidence. Witnesses who offer testimony will do so under oath, which will be administered by the *Hearing Officer*.

(8) The order of proof shall be as follows: The County representative shall present the case-in-chief in support of the alleged violations or misconduct; the applicant may present a case-in-chief defense, if desired. Each party may be allowed to present one (1) rebuttal. Each party's combined presentation shall be limited to one (1) hour, inclusive of direct and cross examination and argument.

(9) The applicant and County may be represented by counsel, may present evidence, and may examine and cross-examine witnesses. Additionally, the *Hearing Officer* is permitted to question witnesses.

(10) Following the presentation of evidence, the *Hearing Officer* shall issue a written decision setting forth the factual and legal basis for the decision within thirty (30) calendar days of the date of the hearing. A copy of the decision shall be sent to the County representative and mailed, via registered or certified mail, to the

applicant at the address provided on the notice of appeal. Should the *Hearing Officer* fail to issue a timely decision, on the thirty-first day after the date of the hearing the applicant or holder may seek review as if a decision adverse to the applicant or holder had been rendered.

(11) Any person aggrieved by the final decision of the *Hearing Officer* may seek review of such decision by petitioning the Superior Court of DeKalb County for a writ of certiorari, setting forth plainly the alleged errors. Such petition shall be filed within thirty (30) calendar days after the final decision of the *Hearing Officer* is rendered.

- (f) Section 302.8 shall be amended by deleting the entirety of the section excepting the last sentence.
- (g) Section 304.2 shall be amended by adding the phrase “retaining walls” after the word “fences”.
- (h) Sections 103.5, 110, 302.1, 302.2, 302.4, 307, 308 and the entirety of Chapter 7 shall be deleted.
- (i) Add applicable dates of January 1 through December 31 to section 304.14.
- (j) Add applicable dates of October 1 to April 1 to section 602.3 and 602.4.

Secs. 18-172 – 18-179. Reserved.

PART II. EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer, after review by the state Department of Community Affairs.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, nor any part thereof, other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this _____ day of _____, 2020.

ROBERT PATRICK
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this _____ day of _____, 2020.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

TIMOTHY C. HARDY
Deputy Director of Code Compliance
DeKalb County, Georgia

VIVIANE H. ERNSTES
County Attorney
DeKalb County, Georgia