Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 10, 2026

Don Brock, Jr., Esq.
Attorney, City of Greenwood
308 Fulton Street
Greenwood, Mississippi 38930

Re: Municipal Authority to Secure or Remove Dilapidated Buildings and Structures that Threaten Public Safety

Dear Mr. Brock:

OFFICIAL OPINION

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the City of Greenwood ("City") has "a substantial inventory of vacant, fire-damaged, structurally compromised, and long-neglected buildings." The City has complied with the notice and hearing requirements set forth in Mississippi Code Annotated Section 21-19-11 (and when applicable Section 21-19-20) before securing or removing such buildings and structures. The Mayor and the City Council have proposed adopting a policy which would allow the City to declare an emergency and then secure or remove dilapidated buildings and structures that pose an immediate threat to public safety without providing the property owner any notice or an opportunity to be heard on the proposed action. Under the City's proposed policy, owners would receive notice within 48 to 72 hours after the action has been taken by the City as well as notice that a hearing before the City Council has been scheduled on a date not more than 14 days later. At that hearing, owners would have the opportunity to present evidence and challenge the validity of the City's emergency declaration, the reasonableness of the City's actions, and any assessment of costs and the statutory penalty. The City's proposed policy would also allow property owners to voluntarily waive their right to a pre-deprivation hearing before the City Council and authorize the City to immediately remove any dilapidated buildings or structures on their property. Your letter indicates that the City will develop a waiver form for owners to sign but that such forms will only be used in situations where owners consent to the immediate removal of structures on their property.

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Questions Presented

1. Does Section 21-19-11 provide the exclusive method by which municipalities may secure or remove privately-owned dilapidated buildings and structures?

2. If not, may a municipality, in the exercise of its police powers under Section 21-19-1, adopt an ordinance that allows dilapidated buildings or structures that pose an immediate threat to public safety to be secured or removed without providing notice to the property owner(s) or an opportunity for them to contest the proposed action?

3. If such authority exists, what contemporaneous documentation does Mississippi law require to support the municipality's determination that immediate action to abate the threat posed by a dilapidated building or structure must be taken without prior notice and a hearing?

4. If such authority exists, does a municipality provide adequate due process to property owners if it provides notice within 48 to 72 hours of securing or removing buildings or structures on their property that a hearing will be held within 14 days and then provides them with an opportunity at the hearing to contest the municipality's determinations and actions, including any assessment of costs or statutory penalty?

5. If such authority exists, may the City's Mayor or his designee unilaterally authorize the securing or removal of dilapidated buildings or structures in emergency circumstances, provided that the City Council ratifies his actions at its next meeting?

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6. May a municipality secure or remove dilapidated buildings or structures in emergency circumstances without prior notice or hearing if the owners of record (or a person with the legal authority to bind the owners) execute a written agreement waiving their right to a hearing and expressly consenting to the actions the municipality proposes to take on their property?

7. May a municipality secure or remove dilapidated buildings or structures that do not pose an immediate threat to public safety without prior notice or hearing, provided that it first obtains the same form of written waiver and consent from the property owner as described in question six?

8. If such written waivers are valid and effective, is it necessary for a municipality's governing authority to approve such waivers on its minutes?

9. If such written waivers are valid and effective, must a municipality obtain the signature of every owner of record of the property where the dilapidated buildings or structures are located, as well as notify or obtain consent from mortgagees, lienholders, or other persons or entities with a recorded interest in the property?

10. If a municipality lawfully secures or removes dilapidated buildings, may salvage proceeds be credited against the municipality's recoverable costs?

Brief Response

1. No. Section 21-19-11 does not provide the exclusive method by which municipalities may secure or remove dilapidated buildings and structures that pose a threat to public safety. Section 21-19-20 authorizes municipalities to demolish or seize abandoned buildings that are a menace to public health and safety subject to the property owner being provided reasonable notice and an opportunity to be heard. And Section 21-19-21 similarly authorizes municipalities to secure or remove buildings and structures that are insecure or dangerous.

2. Municipalities may not adopt an ordinance or regulation that allows dilapidated buildings and structures to be secured or removed without first providing notice and a hearing to the property owner. Any municipal ordinance or policy must be consistent with the Mississippi Constitution and include provisions to ensure that property owners are afforded due process, including reasonable notice and an opportunity to be heard at a hearing, before any building or structure is secured or removed.

3. Given the response to question two, your third question is moot.

4. Given the response to question three, your fourth question is moot.

5. Given the response to question four, your fifth question is moot.

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6. Yes. A municipality may secure or remove dilapidated buildings or structures without complying with the notice and hearing requirements of Section 21-19-11, provided that it first obtains a written agreement executed by the record owners, or someone with legal authority to bind them, waiving their procedural rights and expressly consenting to the work the municipality intends to perform on their property.

7. See the response to question six.

8. Yes. All written agreements with a municipality must be approved by the municipality's governing authority, and the approval must be reflected in its minutes.

9. The municipality would need to obtain the signature of all the record owners of the property for the waiver and consent agreement to be valid and enforceable. The municipality would not need to notify or obtain the written consent of mortgagees, lienholders, or others with a recorded interest in the property.

10. Yes. Any salvage proceeds received by the City may be used to reduce the amount the City declares to be the costs that will be assessed against the property.

Applicable Law and Discussion

We begin by noting that this office cannot interpret or opine upon ordinances or regulations adopted or proposed by municipalities. MS AG Op., *Tullos* at *1 (Aug. 27, 2018); MS AG Op.,

Provine at *1 (July 28, 2006). Therefore, to the extent your request asks this office to review and interpret the City's proposed policy, we must decline to respond with an official opinion. Further, this office is authorized to issue official opinions that answer prospective questions of state law only. Miss. Code Ann. § 7-5-25.

Section 21-17-5(1), commonly referred to as the "home rule" statute, "grants municipalities the right to adopt ordinances with regard to their municipal affairs" so long as such "ordinances are not inconsistent with state legislation and/or the Mississippi Constitution." *Jones v. City of Canton*, 278 So. 3d 1129, 1133 (Miss. 2019) (cleaned up). Municipal governing authorities are vested with the general power to adopt ordinances in accordance with the provisions of Sections 21-19-1, *et seq*. They are specifically authorized to adopt ordinances "to prevent, remove, and abate nuisances," as well as "building codes" and "other codes dealing with general public health, safety or welfare[.]" Miss. Code Ann. §§ 21-19-1(1), 21-19-25(1).

Section 21-19-11 sets out the process by which a municipality may "clean" private property determined to be "in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community[.]" Miss. Code Ann. § 21-19-11(1). The statute includes several procedural safeguards, such as notice to the property owner, a hearing to adjudicate whether the property is a menace to the public health and safety of the community, and an opportunity for the property owner to clean the property. *Id.* If the owner does not clean the property after it has been adjudicated to need cleaning, the municipality may then "proceed to clean the land." *Id.* As part of the cleanup process, the municipality may "secur[e]" or "remov[e]" any "abandoned or dilapidated buildings." *Id.* This office has consistently opined that, under Section 21-19-11, a municipality has the authority to secure or remove dilapidated buildings and structures, "provided it has strictly complied with the notice and hearing requirements and made the requisite factual findings." MS AG Op., *Shaw* at *2 (May 13, 2020) (citing MS AG Op., *Dawes* at *1 (Aug. 8, 2008); MS AG Op., *Daughdrill* at *1 (Apr. 6, 2007)). We also have previously opined that "a municipality may not, by ordinance, prescribe another method to be utilized in the cleaning of private property and must comply with the provisions of Section 21-19-11 when doing so." MS AG Op., *Sutton* at *1 (July 14, 2017); *see also* MS AG Op., *McGee* at *1 (Sept. 18, 2009) ("Establishing standards different from those contained in Section 21-19-11 would be inconsistent with that statutory scheme and would be beyond the powers of the municipality."). Section 21-19-11 is not, however, the only statute that is relevant to the issues raised in your request.

Section 21-19-20 authorizes municipalities to "demolish[]" or "seize[]" any "abandoned house or building" it has determined is "a menace to the public health and safety of the community" and "constitutes a public hazard and nuisance." *Id.* at 1(b)(i); *see also* MS AG Op., *Williams* at *1 (July 2, 2010). That statute also contains "detailed notice and hearing provisions that must be strictly complied with in order to ensure due process to property owners." MS AG Op., *Sutton* at *2 (July 6, 2015). Moreover, Section 21-19-21 authorizes municipalities "to take down and remove buildings, walls, and superstructures that may become insecure or dangerous" and "to require the owner of insecure or dangerous buildings, walls, and other erections to remove or render the same secure and safe at the cost of the owner of such property." *See also* MS AG Op., *Sims* at *1 (Jan. 22, 2016); MS AG Op., *Brock* at *2 (Jan. 29, 2010) (providing municipalities may secure or

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remove buildings and other structures they have found to be dangerous or insecure pursuant to Section 21-19-21).

Our office has previously opined that "[w]hile there is no procedure set forth in Section 21-19-21 for making the necessary findings, taking the corrective actions, and assessing the costs authorized and required therein, a municipality must provide adequate due process to the property owner." MS AG Op., *Brock* at *2; *see* MS AG Op., *Burchfield* at *1 (May 4, 2012). We have also opined that municipalities are not required to use the "same procedures for notice and hearing set forth in . . . Section 21-19-11," but if they choose to enact their own procedure under Section 21-19-21, it "should be in the form of an ordinance." MS AG Op., *Baker* at *2 (Nov. 21, 2003). We have consistently recommended that municipalities adopt a "procedure similar to the one provided in Section 21-19-11." MS AG Op., *Brock* at *2. As stated *supra*, ordinances may not be "inconsistent with state legislation and/or the Mississippi Constitution," including but not limited to providing due process. *Jones*, 278 So. 3d at 1133. Last, municipalities are also authorized to adopt ordinances allowing for the repair and demolition of buildings which are unfit for human habitation, pursuant to Sections 43-35-101 through 43-35-115.

You ask whether a municipality's governing authorities may adopt an ordinance or policy that allows the municipality to declare an emergency and immediately secure or remove dilapidated buildings or structures that pose an imminent threat to life or public safety without providing any notice to the property owner or any hearing for the owner to challenge the proposed action. Such an ordinance or policy would not be consistent with the Mississippi Constitution, which "guarantees minimum procedural due process consisting of (1) notice and (2) opportunity to be heard."[1] *Riverside Traffic Sys., Inc. v. Bostwick*, 78 So. 3d 881, 888 (Miss. 2011) (quotation marks and citation omitted); *see also Lemon v. Mississippi Transp. Comm'n*, 735 So. 2d 1013, 1020 (Miss. 1999) (stating the Mississippi Constitution "prohibit[s] laws which permit deprivation of property without prior notice or hearing") (citation omitted). Accordingly, any adopted ordinance or policy must include provisions to ensure that property owners are afforded due process, including reasonable notice and an opportunity to be heard at a hearing, before any building or structure is secured or removed.[2]

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You also ask whether a municipality may secure or remove dilapidated buildings or structures without complying with the notice and hearing requirements of Section 21-19-11, if it obtains a written waiver and consent agreement signed by the record owners, or someone with the legal

[1] In your request, you cite *Bond v. City of Moss Point*, 240 So. 2d 270 (Miss. 1970), for the proposition that the Mississippi Supreme Court has recognized an emergency exception for municipalities to immediately secure or remove buildings that pose an imminent threat to life or public safety without prior notice and hearing. However, the Court did not expressly recognize such an exception; it quoted a treatise which stated that a municipality may, "after reasonable notice and opportunity" for the owner to "remove or correct . . . the nuisance," "destroy a building or structure that is a menace to public safety or health . . . except in case of emergency[.]" *Id.* at 272 (quoting 7 McQuillin, The Law of Municipal Corporations, (3rd ed.1968), § 24.561). The Court concluded that "[i]t is a sensible and reasonable rule that where the property owner, after reasonable notice provided for in an ordinance, fails and refuses to either repair or remove an unsafe and unfit building that constitutes a public nuisance, that the municipality can remove it at the owner's expense." *Id.* at 273.

[2] We note that the City has adopted, by reference, the International Building Code and International Existing Building Code in its own building code. Both of those Codes contain provisions regarding the emergency measures that may be taken if there is an imminent danger of failure or collapse of a building that endangers life.

authority to bind them, before the work begins. The Mississippi Supreme Court has held that rights to notice and a hearing are subject to waiver. *Dennis v. Dennis*, 824 So. 2d 604, 610 (Miss. 2002). But any such waiver must be knowing and voluntary. *Thomas v. State*, 249 So. 3d 331, 348 (Miss. 2018) ("Persons may relinquish their constitutional rights if they do so knowingly and voluntarily."). It is the opinion of this office, therefore, that municipalities may secure or remove dilapidated buildings or structures without complying with the notice and hearing requirements of Section 21-19-11, only if they first obtain a written agreement signed by the record owners, or someone with legal authority to sign on their behalf, acknowledging that they are waiving their right to notice and a hearing and expressly consenting to the work that the municipality intends to perform on their property.

To be valid and enforceable, such agreements would need to be approved by the municipality's governing authority on its minutes. MS AG Op., *Norton* at *1 (Apr. 7, 2017) ("For a contract . . . to be enforceable, the board minutes must contain enough of the terms and conditions of the contract . . . to determine the liabilities and obligations of the contracting parties without the necessity of resorting to other evidence."). They would also need to be signed by all record owners of the property in question. *See Scarborough v. City of Petal*, 60 So. 3d 193, 197 (Miss. Ct. App. 2010) (holding that, under Section 21-19-11, "notice must be given to all owners of the subject property"). However, Section 21-19-11 does not require that a municipality notify or obtain the consent of mortgagees, lienholders, or others with a recorded interest in the property. MS AG Op., *Alexander* at *1 (Dec. 6, 2002).

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Last, you ask whether a municipality may, after lawfully securing or removing a building or structure, credit the proceeds of any sale of the salvaged materials of the building or structure against the municipality's recoverable costs. We previously opined that, under Sections 21-19-11, 21-19-20, and 21-19-21, "any costs associated with the clean up, removal and/or stabilization efforts of dilapidated buildings or structures by the municipality" are "[t]he responsibility of the owner of the private property, so as to avoid an unlawful donation." MS AG Op., *Barton* at *3 (Nov. 30, 2015). A municipality may not "reduce" the amount of its assessment of the costs against a property. MS AG Op., *Pope* at *2 (Sept. 30, 2020). But ultimately, calculating the costs incurred as a result of such a project is a factual determination that must be made by the municipal governing authority. It is thus our opinion that, if the governing authority makes a factual determination that the total cost of the project was reduced by the sale of salvaged materials, it may adopt, by resolution, the remaining net balance as the amount owed by the property owner.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Wilson Douglas Minor*

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