

ORDINANCE 2012-30

AN ORDINANCE AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES RELATING TO THE FORECLOSED AND VACANT PROPERTY REGISTRATION REQUIREMENTS; TO ESTABLISH AN EFFECTIVE DATE; TO REPEAL CONFLICTING ORDINANCES, AND FOR OTHER PURPOSES

WHEREAS, the City of Powder Springs (the “City”) previously adopted an ordinance requiring registration of foreclosed and vacant properties;

WHEREAS, provisions of House Bill 110 enacted during the 2012 legislative session necessitate amendments and updates to the City’s existing ordinance;

NOW THEREFORE, the Council of the City of Powder Springs hereby ordains that the Code of Ordinances shall be amended as follows:

SECTION ONE

Article II and Article III are repealed and replaced with new Articles II and III, as set forth in the attached Exhibit A.

SECTION TWO

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.

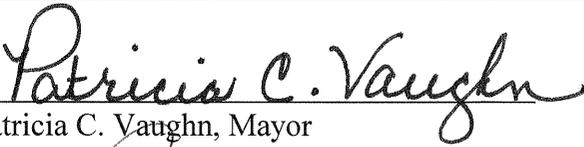
SECTION THREE

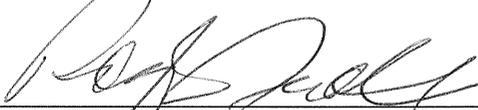
All ordinances and parts of ordinances in conflict herewith are hereby repealed, and this ordinance shall become effective upon its adoption by the Mayor and Council.

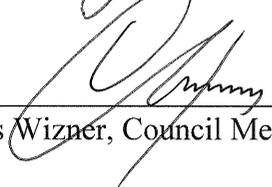
SO ORDAINED this 20th day of August, 2012.

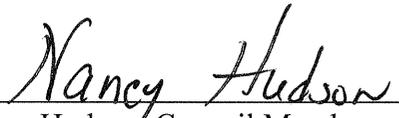
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ORDINANCE 2012-30


Patricia C. Vaughn, Mayor


Rosalyn G. Neal, Council Member

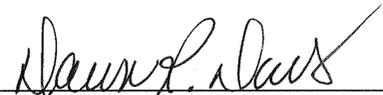

Chris Wizner, Council Member


Nancy Hudson, Council Member


Cheryl Sarvis, Council Member


Albert L. Thurman, Council Member

ATTEST:


Dawn Davis, City Clerk

State 2012 legislation:

HB 110 – Vacant Property Registration

This bill allows local governments to create vacant property registries on properties which have not been inhabited for more than 60 days, have no evidence of utility usage, or are partially constructed or incomplete without a valid building permit. The bill also allows cities to create a registry for foreclosed properties if the bank has failed to file a deed under power with the superior court within 60 days of a foreclosure or transfer. The city would be allowed to charge a registration fee of up to \$100 and may impose penalties of up to \$1000.

Sec. 21-11. - Purpose.

The mayor and council declare and find that improperly maintained and secured foreclosed or vacant properties can become a hazard to the health and safety of persons who may come on or near the property and can adversely affect the aesthetic and economic qualities of the areas within the city. Difficulties also often arise in locating the person responsible for the condition of foreclosed real property. The mayor and council find that there is a substantial need directly related to the public health, safety and welfare to comprehensively address these concerns. It is therefore the purpose and intent of this article to establish a registration program for properties that have been foreclosed or are vacant as a mechanism to protect areas of the city from becoming blighted through the lack of adequate maintenance and adequate security of abandoned properties.

Sec. 21-12. - Definitions.

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

Agent means an individual with a place of business in this state at which he or she is authorized to accept inquiries, notices, and services of process on behalf of a foreclosed real property owner.

Department means the community development department.

Director means the director of the community development department or his or her designee.

Foreclosed real property means improved, or unimproved real property for which a land disturbance permit has been issued by the city, and is held pursuant to a judicial or nonjudicial foreclosure of a mortgage, deed of trust, security deed, deed to secure debt, or other security instrument securing a debt or obligation owed to a creditor; or a deed in lieu of foreclosure in full or partial satisfaction of a debt or obligation owed to a creditor.

Street address means the street or route address but does not mean a post office box.

Vacant real property means real property that:

- (a) Is intended for habitation, has not been lawfully inhabited for at least 60 days, and has no evidence of utility usage within the past 60 days; or
- (b) Is partially constructed or incomplete, without a valid building permit.

Such term does not include a building or a structure containing multiple units with common ownership that has at least one unit occupied with evidence of utility usage. (Ord. No. 2010-54, § 3, 1-3-11)

Sec. 21-13. – Registration of Vacant or Foreclosed Real Property.

(a)

Any person who holds vacant or foreclosed real property shall register the property with the department as provided in this section and pay the administrative registration fee set by the city.

(b)

The person filing the registration shall submit electronically or in person the registration form prepared by the Georgia Department of Community Affairs that shall include the following information:

- (1) The real property owner's name, street address, mailing address, phone number, facsimile number, and e-mail address;
- (2) The agent's name, street address, mailing address, phone number, facsimile number, and e-mail address.
- (3) The real property's street address and tax parcel number;
- (4) The transfer date of the instrument conveying the real property to the owner; and
- (5) At such time as it becomes available, recording information, including deed book and page numbers, of the instrument conveying the real property to the owner.

(c)

A transferee of foreclosed property under power of sale pursuant to OCGA 44-14-160 or pursuant to a deed in lieu of foreclosure shall not be required to file the registration required by this Section or pay the administrative fees, provided the following requirements are met:

- (1) The deed under power of sale or deed in lieu of foreclosure contains the information specified in this section;

- (2) The deed is filed with the clerk of superior court within 60 days of the transfer; and
- (3) Proof of the following is provided to the department:
 - (i) A filing date stamp or a receipt showing payment of the applicable filing fees; and
 - (ii) The entire deed under power of sale or entire deed in lieu of foreclosure.

(Ord. No. 2010-54, § 3, 1-3-11)

Sec. 21-14. - Maintenance.

The vacant or foreclosed property owner or agent designated by the owner shall maintain the property and structures in accordance with all governing city codes and ordinances.

(Ord. No. 2010-54, § 3, 1-3-11)

Sec. 21-15. - Registry update

- (a) The vacant or foreclosed real property owner shall update the information required in Section 21-13 within 30 days after any change in such required information regardless of whether the information provided to the registry was in the deed under power of sale or deed in lieu of foreclosure.
- (b) The vacant or foreclosed real property owner, or the agent of such owner, may apply to remove the foreclosed real property from the registry at such time as the real property no longer constitutes foreclosed real property. The city shall act upon such application within 30 days, and if no determination is made within 30 days, the application shall be deemed granted.

(Ord. No. 2010-54, § 3, 1-3-11)

Sec. 21-16. - Penalty.

- (a) All persons subject to registration or registered under this article shall comply with applicable provisions of this Code. Persons found in violation of this article are subject to penalties set forth in section 1-8.

(b) A person who believes the provisions of this article have been applied in error may appeal in the following manner:

- (1) Within 10 days of an adverse decision, an appeal must be filed in writing with the city manager. The city manager shall respond to the appeal in writing within thirty days.
- (2) The decision of the city manager may be further appealed by filing a written notice of appeal to the municipal court within thirty days of the decision. Notice of the appeal shall be delivered to the municipal court, stating the grounds for further appeal. Upon the filing of the notice of appeal, the city manager shall transmit all documentation constituting the record upon which the decision appealed from was taken.
- (3) The municipal court shall fix a reasonable time, not to exceed 90 days, for hearing the appeal and give written notice to the appellant at least ten days prior to the hearing date. The notice shall indicate the place, date and time of the hearing.
- (4) A person aggrieved by the decision of the municipal court may appeal that decision to the Superior Court of Cobb County within thirty days of the decision.

(Ord. No. 2010-54, § 3, 1-3-11)

Secs. 21-17—21-30. - Reserved.

Sec. 21-31. - Purpose.

The mayor and council declare and find that within the city limits, there are vacant properties real properties that are in an unsafe, dangerous, or unsecure condition which need to be made safe and secure. Such properties pose a danger to the health, safety, and welfare of the citizens of Powder Springs by increasing neighborhood blight, creating fire and other hazards to adjoining properties, attracting criminal activities, and creating an attractive nuisance to children. For all of these reasons, it is essential to public health, safety and welfare that such properties be properly maintained and secured.

(Ord. No. 2010-54, § 4, 1-3-11)

Sec. 21-32. - Definitions.

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

Agent means an individual with a place of business in this state at which he or she is authorized to accept inquiries, notices, and services of process on behalf of a foreclosed real property owner.

City means the City of Powder Springs, Georgia.

Code enforcement means the code enforcement division of the community development department.

Department means the community development department.

Director means the director of the community development or his/her duly authorized appointee.

Owner means any person, mortgagee, agent, operator, service company, property manager, real estate broker, firm, partnership, corporation or trust:

- (1) Having a legal or equitable interest in the property;
- (2) having possession of the property;
- (3) that holds, owns or controls mortgage loans for mortgage backed securities transactions and has initiated the foreclosure process;
- (4) That is recorded in the official records of the state, county or municipality as holding title to the property; or
- (5) Otherwise having control of the property, including the guardian of the estate or any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Securing means causing a vacant building or structure to be secured against unauthorized entry in compliance with this article.

Street address means the street or route address but does not mean a post office box.

Structurally sound means free of imperfections which affect the intended use of a building or structure in compliance with applicable building codes.

Vacant real property means real property that:

- (a) Is intended for habitation, has not been lawfully inhabited for at least 60 days, and has no evidence of utility usage within the past 60 days; or
- (b) Is partially constructed or incomplete, without a valid building permit.

Such term does not include a building or a structure containing multiple units with common ownership that has at least one unit occupied with evidence of utility usage.

(Ord. No. 2010-54, § 4, 1-3-11)

Sec. 21-33. - Maintenance.

All vacant real properties properties (residential or commercial) within the city shall comply with the following requirements:

- (1)

All exterior doors and windows shall be kept in sound working condition free of broken glass.
- (2)

All exterior doors shall be equipped with a workable lock or locking device and shall be kept securely locked during the period of time said building is vacant.
- (3)

All windows shall be secured by latch, lock or other means so as to prevent easy entry into such structure by children, vagrants, or unauthorized persons.
- (4)

All exterior walls and roofs shall be kept in good repair and free of holes, cracks, defective materials and structural deterioration so as to keep such building from becoming a breeding place for rodents, roaches and disease-carrying insects.

(5)

The exterior of said building and the premises thereon shall be kept free of any accumulation of flammable or combustible rubbish or waste materials of sufficient quantity to constitute a danger to said building or any other building or premises in the event that such waste materials shall become ignited.

(6)

The exterior of the premises shall be kept free of weeds and/or grass in excess of eight (8) inches, any accumulation of trash, garbage, rubbish or any waste material of such quantity as to constitute an unsanitary condition.

(7)

Any existing fence shall be maintained in good repair with gates locked at all times.

(Ord. No. 2010-54, § 4, 1-3-11)

Sec. 21-34. - Reserved council.

(Ord. No. 2010-54, § 4, 1-3-11)

Sec. 21-35. - Permit to secure vacant structure.

(a)

Permit to secure.

(1)

If the owner or the city determines that a vacant structure is or has become unsecure, within ten (10) days of such determination, the owner shall apply for, allow necessary inspections by the city and obtain a permit to secure the vacant structure ("permit to secure"). The permit to secure application shall contain sufficient information for the department to confirm that the securing is in compliance with this section. The permit to secure expires after six (6) months.

(2)

The issuance of a permit to secure shall also be subject to all of the following conditions:

a.

The owner shall submit a detailed plan for correction, repair or rehabilitation of violations of state or local building and housing standards and for the securing of the doors, windows and other openings by the conventional method used in the original construction and design of the building or structure;

b.

The owner shall submit a timeline for applying for appropriate permits for such work and for completing such work prior to the expiration of the permit to secure;

c.

The permit to secure may be revoked by written notice of the director if the owner fails to comply with the plan for such work or fails to comport to the timeline submitted; and

d.

A letter of written consent by the owner granting permission for city officials to enter and inspect the property and all structures upon it during the period of time in which the permit to secure is in effect.

(3)

Corrective action to bring the vacant structure into full compliance with the plan for correction shall begin within thirty (30) days after issuance of the permit to secure and shall be completed prior to the expiration of the permit to secure. Failure to have timely begun and/or completed the corrective action shall constitute a violation of this article.

(4)

The city will not consider a new application for a permit to secure for the same property.

(b)

Non-conforming structures. If the city determines that an owner of a vacant structure has, prior to the passage of this article, secured the structure in a manner inconsistent with the provisions of this section, the city shall notify the owner of same and give the owner sixty (60) days from issuance of the notice to properly secure the structure and obtain the required permit.

(c)

Exceptions to permit requirements. Neither registration nor a permit to secure are required in the following circumstances:

(1)

Temporary emergency situations, not to exceed sixty (60) days in length, including but not limited to damage caused by vandalism, theft or weather or hurricane preparation; or

(2)

Seasonal residences in which the owner lives at least six (6) months out of the year in the residence.

(d)

Standards for securing vacant structures.

(1)

Unless an alternative plan is accepted by the department, the securing of the doors, windows or other openings of any building or structure, other than by the conventional method used in the original construction and design, shall comply with the following minimum standards:

a.

Windows and similar openings. Windows and similar openings shall be secured with opaque material ("material") of a minimum thickness of five-eighths-inch nominal or its equivalent. Vent holes may be required, as deemed necessary by the city. The material shall be secured in place in a manner approved by the department.

b.

Exterior doors. Exterior doors shall be boarded with opaque material ("material") of a minimum thickness of five-eighths-inch nominal or its equivalent, fitted to the entry doorjamb with maximum one-eighth-inch clearance for each edge. The existing door should be removed and stored inside the building. The material shall be attached in a manner approved by the department.

c.

Fencing. The following requirements shall be followed when securing a building by fencing:

1.

Fencing shall consist of a metal chain link fence six (6) feet in height. The fence shall be installed to withstand a fifty-pound lateral force applied to the top of the fence.

2.

The fence shall completely encircle the property and not be directly attached to the structure as to provide a climbable surface for accessing the structure's upper floor or roof.

3.

The fencing must comply with all other city codes.

d.

All work shall be done in a neat and workmanlike fashion.

(2)

In addition to the requirements set forth above, the owner shall also comply with the following requirements:

a.

The interior of the structure shall be cleaned of all trash, junk, garbage, debris and solid waste and personal possessions shall be removed from the interior of the structure so as to eliminate any fire or health hazard and prevent hindrance to firefighting equipment or

personnel in the event of a fire. Disposal of trash, etc. must comply with any and all provisions of this Code;

b.

All garbage, trash, and debris shall be removed from the exterior of the property; and

c.

All weeds or grass in excess of eight (8) inches shall be removed from the exterior of the property.

(e)

Fees. Applications for a permit to secure shall be accomplished by the required fee, set forth in the fee schedule adopted by mayor/council.

(Ord. No. 2010-54, § 4, 1-3-11)

Sec. 21-36. - Penalties for violation of this article.

(a) Should the owner and/or responsible party fail to respond to the city's notice, register or renew registration pursuant to the terms hereof, , allow inspections, pay all associated fees or obtain all required permits, the department may issue a citation setting a hearing in municipal court. All persons found in violation are subject to the penalties set forth in section 1-8. Each day of violation may be considered a separate violation.

(b) A person who believes the provisions of this article have been applied in error may appeal in the following manner:

(1) Within 10 days of an adverse decision, an appeal must be filed in writing with the city manager. The city manager shall respond to the appeal in writing within thirty days.

(2) The decision of the city manager may be further appealed by filing a written notice of appeal to the municipal court within thirty days of the decision. Notice of the appeal shall be delivered to the municipal court, stating the grounds for further appeal. Upon the filing of the notice of appeal, the city manager shall transmit all documentation constituting the record upon which the decision appealed from was taken.

(3) The municipal court shall fix a reasonable time, not to exceed 90 days, for hearing the appeal and give written notice to the appellant at least ten days prior to the hearing date. The notice shall indicate the place, date and time of the hearing.

- (4) A person aggrieved by the decision of the municipal court may appeal that decision to the Superior Court of Cobb County within thirty days of the decision.

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