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[Sec. 21-1. - Short title.](#)

This chapter is known as and may be cited as "The Powder Springs Nuisance Abatement Ordinance."

(Ord. No. 2009-061, § 1, 12-7-09)

[Sec. 21-2. - Intent and purpose.](#)

The mayor and council hereby declare it to be the purpose and intent of this chapter to establish a summary procedure for use in the abatement of public nuisances. The provisions hereof are adopted pursuant to the authority provided by O.C.G.A. § 41-2-7 et seq. as amended from time to time. It is the further purpose and intent of this chapter that the procedures established hereunder shall comply with the minimum provisions of O.C.G.A. § 41-2-7 et seq.

(Ord. No. 2009-061, § 1, 12-7-09)

[Sec. 21-3. - Findings.](#)

The mayor and council find that there exist in the city properties which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and which are not in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; which have other conditions that render such properties unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the city; or which are vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed.

(Ord. No. 2009-061, § 1, 12-7-09)

[Sec. 21-4. - Definitions.](#)

As used throughout this chapter, the term:

Applicable codes means (1) any housing or abatement standard provided in O.C.G.A., Title 8, Chapter 2, including standard minimum codes as adopted now or hereafter by ordinance and codified in the Code of Ordinances, City of Powder Springs, Georgia, or by operation of law, or other property maintenance or building standards or codes as adopted now or hereafter by ordinance or operation of law, or general nuisance law, relative to the safe use of real property; and (2) any fire or life safety code as provided for in O.C.G.A. Title 25,

Chapter 2. Any such building or minimum standard codes for real property improvements shall be deemed to mean those building or minimum standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law.

Closing means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.

Drug crime means an act which is a violation of O.C.G.A. Title 16, Chapter 13, Article 2, known as the "Georgia Controlled Substances Act."

Interested party means:

- (1) Owner;
- (2) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;
- (3) Those parties having filed a notice in accordance with O.C.G.A. § 48-3-9;
- (4) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner or records maintained in the county courthouse or by the clerk of court. Interested party shall not include the holder of the benefit or burden of any easement or right-of-way whose interest is properly recorded, which interest shall remain unaffected; and
- (5) Persons in possession of said property and premises.

Owner means the holder of title in fee simple and every mortgagee of record.

Dwelling, 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 outhouse, improvement, and appurtenance belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. Also as used in this chapter, the term shall not mean or include any farm, any building or structure located on a farm, or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage, or processing of crops, livestock, poultry, or other farm products.

Public authority means the mayor or any councilmember, any housing authority officer, or any officer who is in charge of any department or branch of government relating to health, fire, or building regulations or to other activities concerning dwellings, buildings, or structures in the city.

Public officer shall mean the director of community development or his or her designee.

Repair means altering or improving a dwelling, building, or structure so as to bring it into compliance with applicable codes and/or the cleaning or removal of debris, trash, and other materials present and accumulated which create a health or safety hazard in or about any dwelling, building or structure.

Resident means any person residing in the City of Powder Springs on or after the date on which the alleged nuisance arose.

(Ord. No. 2009-061, § 1, 12-7-09)

Sec. 21-5. - Duties of property owners.

It is the duty of the owner of every property located within the City of Powder Springs to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the city, or such ordinances which regulate and prohibit activities on property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure, or property in violation of such codes or ordinances.

(Ord. No. 2009-061, § 1, 12-7-09)

Sec. 21-6. - Nuisance abatement procedure.

- (a) *Appointment and designation of public officer.* The director of community development is hereby appointed and designated as the public officer with the authority to carry out the powers and duties of this chapter. Such appointment and designation shall include the designee of such person.
- (b)

Complaint and investigation. Whenever a request is filed with the public officer by a public authority or by at least five (5) residents charging that any dwelling, building, structure, or property:

- (1) Is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes;
 - (2) Is vacant and being used in connection with the commission of drug crimes; or
 - (3) Constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer shall make an investigation or inspection of the specific dwelling, building, structure, or property to determine if such conditions exist under applicable codes. The public officer shall have the authority to enter upon premises to conduct an inspection, provided such entry is made with the least possible inconvenience to the person(s) in possession. If such an inspection is necessary, the public officer shall endeavor to obtain the permission of the owner to conduct such inspection. If permission is withheld, the public officer may seek the assistance of the city attorney's office to obtain an inspection warrant from a court of competent jurisdiction. The public officer may determine under existing ordinances that a dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use upon a finding of conditions on the dwelling, building, or structure which are dangerous or injurious to the health, safety, or morals of the occupants, occupants of neighboring dwellings, buildings, or structures, or other residents of the city. Such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accidents, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanliness. The public officer may determine that the property is being used in the commission of drug crimes upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.
- (c) *Judicial complaint and summons.* If the public officer's investigation or inspection confirms that any property meets one (1) or more of the three (3) enumerated standards from subsection (b), the public officer may file in a court of competent jurisdiction a complaint in rem against the lot, tract, or parcel of real property wherein the nuisance complained of exists and shall cause summons and a copy of the complaint to be served on the interested parties for such dwelling, building, or structure pursuant to the provisions of section 21-7. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the interested parties; state with particularity the factual basis for the action; and contain a statement of the action sought by the public officer to abate the alleged nuisance.
- (d) *Time of hearing.* The summons shall notify the interested parties that a hearing will be held before a court of competent jurisdiction at a date and time certain. Such hearing shall be held not less than fifteen (15) days nor more than forty-five (45) days after the filing of said complaint.
- (e) *Right to be heard.* The interested parties shall have the right to file an answer to the complaint and to appear in person or by attorney and offer testimony at the time and place fixed for the hearing.
- (f) *Order.* If, after such notice and hearing, the court determines that the dwelling, building, or structure in question meets one or more of the standards enumerated in subsection (b) so as to constitute a public nuisance, the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the interested parties that have answered the complaint or appeared at the hearing an order which does one of the following:
- (1) If the repair of the said dwelling, building, or structure can be made at a reasonable cost in relation to its present value, the order shall require the owner, within a specified time, to repair such property so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to effect a closing of any structure so that it cannot be used in connection with the commission of drug crimes; or
 - (2) If the repair of the said dwelling, building, or structure in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at a reasonable cost in relation to the present value thereof, the order shall require the owner, within a specified time, to demolish and remove such dwelling, building, or structure and all debris from the property.

For purposes of this section, the court shall make its determination of "reasonable cost in relation to the present value of the dwelling, building, or structure" without consideration of the value of the land on which the structure is situated; provided, however, that costs of the preparation necessary to repair a structure may be considered. Income and financial status of the owner shall not be a factor in the court's determination. The present value of the structure and the costs of repair, alteration, or improvement may be established by affidavits of real estate appraisers with a Georgia appraiser classification as provided in O.C.G.A. Title 43, Chapter 39A, qualified building contractors, or qualified building inspectors without actual testimony presented. Costs of repair, alteration, or improvement of the structure shall be the cost necessary to bring the structure into compliance with the applicable codes relevant to the cited violations.

- (g) *Remedies of public officer in the event of noncompliance with order.*
- (1) The order entered under subsection (f) shall further provide that, if the owner fails to comply with an order to repair or demolish the dwelling, building, or structure within the specified time, the public officer may cause such dwelling, building, or structure to be repaired, altered, or improved or to be vacated and closed or demolished. Such abatement action shall commence within two

hundred seventy (270) days after the expiration of time specified in the order for abatement by the owner. Any time during which such action is prohibited by a court order issued pursuant to O.C.G.A. § 41-2-13 or any other equitable relief granted by a court of competent jurisdiction shall not be counted toward the two hundred seventy (270) days in which such abatement action must commence.

- (2) If the public officer chooses to have the work done as ordered on any dwelling building or structure, he or she shall cause to be posted on the main entrance of the building, dwelling, or structure a placard with the following words:

This building is unfit for human habitation or commercial, industrial, or business use and does not comply with the applicable codes or has been ordered secured to prevent its use in connection with drug crimes or constitutes an endangerment to public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful.

- (h) *Salvage.* If the public officer has a structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure, and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid. Neither the public officer nor the city shall have any liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials.
- (i) *Lien for costs.* The order shall provide that the amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the city finance director, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred. Such costs shall include but not be limited to the cost of demolition, reasonable attorneys' fees and all court costs, appraisal fees, administrative costs incurred by the tax commissioner, restoration to grade of the real property should it be demolished, and title examination costs. Such lien shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure, or demolition, in the office of the clerk of superior court, and shall relate back to the date of the filing of the lis pendens notice required under subsection 21-7(b). The clerk of superior court shall record and index such certified copy of the order in the deed records of the county and enter the lien on the general execution docket. Such lien should cross reference the order and include the original caption and case number from the nuisance abatement action. 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 in full.
- (j) *Enforcement of lien.*
- (1) Upon a final determination of costs, fees, and expenses incurred in accordance with this chapter, the public officer shall transmit to the city finance director a statement of the total amount due and secured by said lien, together with copies of all notices provided to interested parties. The statement of the public officer shall be transmitted within ninety (90) days of completion of the repairs, demolition, or closure. It shall be the duty of the city finance director to collect the amount of the lien using all methods available for collecting real property ad valorem taxes, including specifically O.C.G.A. Title 48, Chapter 4; provided, however, that the limitation of O.C.G.A. § 48-4-78 which requires twelve (12) months of delinquency before commencing a tax foreclosure shall not apply. The city finance director shall remit the amount collected to the city.
- (2) Enforcement of liens may be initiated at any time following receipt by the city finance director of the final determination of costs. The unpaid lien amount shall bear interest and penalties from and after the date of final determination of costs in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes. An enforcement proceeding pursuant to O.C.G.A. § 48-4-78 for delinquent ad valorem taxes may include all amounts due under this chapter.
- (3) The redemption amount in any enforcement proceeding shall be the full amount of the costs as finally determined with interest, penalties, and costs incurred by the city and the city finance director in the enforcement of the lien. Redemption of the property from the lien may be made in accordance with the provisions of O.C.G.A. § 48-4-40 and 48-4-81.
- (k) *Waiver of lien.* The mayor and council may waive and release any such lien imposed on property of the owner for costs incurred by the city up to the time of the entry of the order and any additional costs incurred subsequent thereto in attempting to bring the property into compliance by entering into a contract with the owner in which the owner agrees to a timetable for rehabilitation of the real property or the dwelling, building, or structure on the property and demonstrates the financial means to accomplish such rehabilitation.
- (l) *Appellate procedure.* Where the abatement action does not commence in the superior court, review of a court order requiring the repair, alteration, improvement, or demolition of a property shall be by direct appeal to the superior court under O.C.G.A. § 5-3-29.
- (m) *Alternate remedies.* Nothing in this section shall be construed as to limit or impair the authority of public officers or other city employees under existing and future ordinances to issue citations for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance,

and conditions creating a public health hazard or general nuisance, and to seek to enforce such citations in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this Code section. The issuance of a citation for a violation of any such codes shall not be required as a prerequisite to issuing a complaint in rem under this section.

(Ord. No. 2009-061, § 1, 12-7-09)

Sec. 21-7. - Service and notice.

- (a) Copies of the complaint and summons shall be served in each of the following ways as applicable:
- (1) At least fourteen (14) days prior to the date of the hearing, the public officer shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the complaint shall also be mailed by first class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property within three (3) business days of filing the complaint and at least fourteen (14) days prior to the date of the hearing.
 - (2) For an interested party whose mailing address is unknown, a notice stating the date, time, and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in such county once a week for two (2) consecutive weeks prior to the hearing.
- (b) A notice of lis pendens shall be filed in the office of the clerk of superior court in the county in which the dwelling, building, or structure is located at the time of filing the complaint in the appropriate court. Such notice shall have the same force and effect as other lis pendens notices provided by law.
- (c) Orders and other filings made subsequent to service of the initial complaint and summons shall be served in the manner provided in this section on any interested party who answers the complaint or appears at the hearing. Any interested party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

(Ord. No. 2009-061, § 1, 12-7-09)

FOOTNOTE(S):

⁽⁴⁸⁾ **Cross reference**— Health and sanitation, ch. 21. [\(Back\)](#)