

CHAPTER 34 – NUISANCES

ARTICLE I. - IN GENERAL

Secs. 34-1—34-17. - Reserved.

Secs. 34-1—34-17. - Reserved.

ARTICLE II. - GENERAL NUISANCE ABATEMENT PROCEDURE

Sec. 34-18. - Offense; penalty.

- (a) It is declared to be an offense for any owner, agent, or tenant to maintain a nuisance. Each day a nuisance is continued shall constitute a separate offense. Following five days after receipt of certified written notice to the property owner, agent, or tenant, a citation may be issued by the city.
- (b) Penalties for the first violation of this section shall be a minimum fine of \$100.00. The penalty for second violations of the same provisions of this section by the same owner or tenant shall be a minimum fine of \$500.00. Third or repeat violations of the same provisions of this section by the same owner or tenant shall be a minimum fine of \$1,000.00.
- (c) Unless otherwise specified, no penalty issued for a violation of this article shall be inconsistent with the provisions set forth in section 1-10.

Sec. 34-19. - Conditions harmful to health.

- (a) The following conditions being maintained or located on an owner's property may be declared to be nuisances when any one of them endangers the health, welfare, or good of other persons or the good order of the community:
 - (1) Stagnant water on the premises;
 - (2) Any dead or decaying matter, weeds, vegetation, or any fruit, vegetable, animal, or rodent, upon the premises which is odorous or capable of causing disease or annoyance to the inhabitants of the city;
 - (3) The generation of smoke or fumes in sufficient amounts to cause odor or annoyance to the inhabitants of the city;
 - (4) The pollution of public water or the injection of matter into the sewerage system that would be damaging thereto;
 - (5) Maintaining a dangerous or diseased animal or fowl;
 - (6) Obstruction of a public street, highway, or sidewalk without a permit;
 - (7) Loud or unusual noises which are detrimental or annoying to reasonable people including, without limitation, unusual loud disturbances in or around churches or multiple-family complexes such as loud music and other activities in swimming pool and clubhouse areas;
 - (8) All walls, trees, and buildings that may endanger persons or property
 - (9) Any business or building where illegal activities are habitually and commonly conducted in such a manner as to reasonably suggest that the owner or operator of the business or building was aware of the illegal activities and failed to reasonably attempt to prevent the activities;
 - (10) Unused iceboxes, refrigerators, and the like, unless the doors, latches or locks thereof are removed;
 - (11) Any other condition constituting a nuisance under state law or this Code.
- (b) This section shall not be construed to be the exclusive definition of nuisance within this Code.

State law reference— Nuisance defined, O.C.G.A. § 41-1-1.

Sec. 34-20. - Complaints.

- (a) Any official of the city or otherwise authorized person may direct a complaint of nuisance to the city police department, or the city manager or his designee. Any complaint of nuisance shall be investigated by the police department and may be placed on the municipal court docket for a hearing upon the basis of the investigation.
- (b) The municipal court, after five days' notice to the party involved, shall hold a hearing thereon, and, upon finding that a nuisance does exist, shall issue an order to the owner, agent in control of, or tenant in possession, stating that a nuisance has been found to exist and that the nuisance must be abated within so many hours or days as the judge shall deem reasonable, having consideration for the nature of the nuisance and its effect on the public.
- (c) County animal control officers or city building and license inspectors may also receive complaints, investigate the same, and place on the court docket such complaints in the same manner as police officers.

State law reference— Filing of complaint to abate public nuisance, O.C.G.A. § 41-2-2; authority of municipal court to order abatement of nuisance, O.C.G.A. § 41-2-5.

Sec. 34-21. - Abatement by city.

- (a) In any case where the owner, agent, or tenant fails to abate the nuisance in the time specified, or where the owner, agent, or tenant cannot be served with notice, or where the nature of the nuisance is such, in the opinion of the municipal court judge, that it must be immediately abated, the judge may issue an order to the chief of police directing the nuisance to be abated.
- (b) The chief of police, in such case, shall keep a record of the expenses and cost of abating same and the costs shall be billed against the owner, agent, or tenant for collection as for city revenues generally and shall become a lien on the property of such persons.
- (c) Other city departments shall assist the chief of police as is necessary in abating nuisances hereunder.

Sec. 34-22. - Summary abatement; nuisance per se and emergency conditions

Nothing contained in this chapter shall prevent the municipal court judge from summarily and without notice ordering the abatement of or abating any nuisance that is a nuisance per se in the law or where the case is an urgent one and the health and safety of the public or a portion thereof is in imminent danger.

State law reference— Similar provisions, O.C.G.A. § 41-2-5.

Secs. 34-23—34-47. - Reserved.

ARTICLE III. - DANGEROUS, UNSAFE OR UNFIT BUILDINGS OR STRUCTURES

State Law reference— Unsafe building ordinances, O.C.G.A. § 41-2-7 et seq

Sec. 34-48. - 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:

Applicable codes means:

- (1) Any optional housing or abatement standard provided in O.C.G.A. title 8, ch. 2 (O.C.G.A. § 8-2-1 et seq.), as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property;
- (2) Any fire or life safety code as provided for in O.C.G.A. title 25, ch. 2 (O.C.G.A. § 25-2-1 et seq.); and
- (3) Any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in O.C.G.A. title 8, ch. 2 (O.C.G.A. § 8-2-1 et seq.), after October 1 provided that 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; and
- (4) The International Property Management Code, International Codes and the Uniform Land Development Code.

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 the Controlled Substances Act (O.C.G.A. § 16-13- 20 et seq.).

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, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. The term "dwellings, buildings, or structures" 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.

Interested parties 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 the court. The term "interested parties" 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 the title in fee simple and every mortgagee of record.

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

Public officer means the officer or officers who are authorized by O.C.G.A. §§ 41-2-7, 41-2-8, and 41-2-9 through 41-2-17 and by this article to exercise the powers prescribed by this article or any agent of such officer or officers.

Repair means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes in the jurisdiction where the property is located and 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 jurisdiction where the property is located on or after the date on which the alleged nuisance arose.

State law reference— Similar provisions, O.C.G.A. § 31-2-8.

Sec. 34-49. - Findings.

- (a) The governing authority of the city finds and declares that, within the city limits, there is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and not in compliance with applicable state minimum standard codes as adopted by ordinance or operation of law or any optional building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance in the city; or general nuisance law in which constitutes a hazard to the health, safety, and welfare of the people of the city and the state; and that public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.
- (b) It is further found and declared that in the city, where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of the city and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent real estate unsafe or inimical to safe human habitation. The governing authority of the city finds that there exist in the city dwellings, buildings, or structures 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; or other conditions exist rendering such dwellings, buildings or structure 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 vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed, and private property exists constituting and endangerment to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the property.

- (c) It is the intention of the governing authority that this article shall comply with and does comply with O.C.G.A § 41-2-9(b) as a finding that conditions as set out in O.C.G.A. § 41-2-7 exist within the city.

Sec. 34-50. - Continued use of other laws and ordinances.

It is the intent of the council that nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of any local enabling act, charter, or ordinance or regulation, nor to prevent or punish violations thereof, and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by any other law or ordinance, legislation, or regulation.

Sec. 34-51. - Duties of owners; appointment of public officer; procedures for determining premises to be unsafe or unhealthy.

- (a) It is the duty of the owner of every dwelling, building, structure, or property within the jurisdiction 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.
- (b) The city manager shall appoint or designate the city code enforcement officer, city fire marshal, city fire chief, city police chief, building inspector, and their designees as public officers to exercise the powers prescribed by this article.
- (c) Whenever a request is filed with the public officer by a public authority or by at least three residents of the city charging that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or 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. If the officer's investigation or inspection identifies that any dwelling, building, structure, or property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer may issue a complaint in rem against the lot, tract, or parcel of real property on which such dwelling, building, or structure is situated or where such public health hazard or general nuisance exists and shall cause summons and a copy of the complaint to be served on the owner and interested parties in such dwelling, building, or structure. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the owner and 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. The summons shall notify the owner and interested parties that a hearing will be held before the municipal court at a date and time certain and at a place within the city where the property is located. Such hearing shall be held not less than 15 days or more than 45 days after the filing of said complaint in court. The owner and 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 hearing.
- (d) If, after such notice and hearing, the court determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the owner and any interested parties that have answered the complaint or appeared at the hearing, an order:
 - (1) If the repair, alteration, or improvement of said dwelling, building, or structure can be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to repair, alter, or improve such dwelling, building, or structure so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the structure so that it cannot be used in connection with the commission of drug crimes;

- (2) If the repair, alteration, or improvement of 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 of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to demolish and remove such dwelling, building, or structure and all debris from the property;
 - (3) For purposes of this article, 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, alter, or improve 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 state appraiser classification as provided in O.C.G.A. title 43, ch. 39A (O.C.G.A. § 43-39A-1 et seq.), qualified building contractors, or qualified building inspectors without actual testimony presented; or
 - (4) 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 in force in the jurisdiction.
- (e) If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the public officer may cause such dwelling, building, or structure to be repaired, altered, improved, to be vacated and closed, or demolished. The public officer 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 the public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful."
- (f) If the public officer has the 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. The public officer and the city are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials.
- (g) The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the tax commissioner, 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.
- (h) The lien provided for in subsection (g) of this section 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 in the county and shall relate back to the date of this filing of the lis pendens notice required under O.C.G.A. § 41-2-12(c). 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. 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. After filing a certified copy of the order with the clerk of superior court, the public officer shall forward a copy of the order and a final statement of costs to the county tax commissioner. It shall be the duty of the county tax commissioner to collect the amount of the lien in conjunction with the collection of ad valorem taxes on the property and to collect the amount of the lien as if it were a real property ad valorem tax, using all methods available for collecting real property ad valorem taxes, including specifically O.C.G.A title 48, ch. 4 (O.C.G.A. § 48-4-1 et seq.); provided, however, that the limitation of O.C.G.A. § 48-4-78 which requires 12 months of delinquency before commencing a tax foreclosure shall not apply. The county tax commissioner shall collect and enforce municipal liens imposed pursuant to this chapter in accordance with O.C.G.A. § 48-5-359.1. The tax commissioner shall remit the amount collected to the governing authority of the city.
- (i) The tax commissioner shall collect and retain an amount equal to the cost of administering a lien authorized by O.C.G.A. § 41-2-7 et seq. unless such costs are waived by resolution of the county. Any such amount collected and retained for administration shall be deposited in the general fund of the county to pay the cost of administering the lien.

- (j) The city may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the city agreeing to a timetable for rehabilitation of the real property of the dwelling, building, or structure on the property and demonstrating the financial means to accomplish such rehabilitation.
- (k) 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 dwelling, building, or structure shall be by direct appeal to the superior court under O.C.G.A. § 5-3-29.
- (l) The public officers designated herein may 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 may seek to enforce such citation in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this article.
- (m) Nothing in this article shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

State law reference— Similar provisions, O.C.G.A. § 41-2-9.

Sec. 34-52. - Determination under existing ordinances.

- (a) The public officer may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure, or the occupants of a neighborhood dwelling, building, or structure, or of other residents of the city. Such conditions include, without limiting the generality of the foregoing, the following:
 - (1) Defects therein increasing the hazards of fire, accidents or other calamities;
 - (2) Lack of adequate ventilation, light, or sanitary facilities;
 - (3) Dilapidation;
 - (4) Disrepair;
 - (5) Structural defects;
 - (6) Uncleanliness; and
 - (7) Other additional standards, which may from time to time be adopted and referenced herein by ordinance amendment.
- (b) The public officer may determine, under existing ordinances, that a dwelling, building or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes based upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

State law reference— Similar provisions, O.C.G.A. § 41-2-10.

Sec. 34-53. - Powers of public officers.

The public officers designated in this article shall have the following powers:

- (1) To investigate the dwelling conditions in the city in order to determine which dwellings, buildings, or structures therein are unfit for human habitation or are unfit for current commercial, industrial, or business use or are vacant, dilapidated, and being used in connection with the commission of drug crimes;
- (2) To administer oaths and affirmations, to examine witnesses, and to receive evidence;
- (3) To enter upon premises for the purpose of making examinations; provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of such officer, agents, and employees as he deems necessary to carry out the purposes of this article; and
- (5) To delegate any of his functions and powers under this article to such officers and agents as he may designate.

State law reference— Similar provisions, O.C.G.A. § 41-2-9.

Sec. 34-54. - Service of complaints and other filings.

- (a) Complaints issued by a public officer pursuant to this article shall be served in the following manner:
 - (1) At least 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 identities and addresses are reasonably ascertainable
 - (2) 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 business days of filing the complaint and at least 14 days prior to the date of the hearing.
 - (3) For interested parties 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 the county once a week for two consecutive weeks prior to the hearing.
- (b) Notice of lis pendens shall be filed in the office of the clerk of superior court of the county 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 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.

State law reference— Similar provisions, O.C.G.A. § 41-2-12.