

CHAPTER 48: ABATEMENT OF NUISANCE PROPERTY

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48-1. PURPOSE AND AUTHORITY

This Chapter is intended to provide additional enforcement authority to the County in accordance with the abatement of nuisance provisions set forth in O.C.G.A. § 41-2-1, et seq.

- A. The County intends that this Chapter shall comport with, and be susceptible to enforcement under, O.C.G.A. § 41-2-1, et seq. Pursuant thereto, it is found and declared that 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 are detrimental to the welfare and are dangerous and injurious to the health, safety, and welfare of the people of this County; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings or structures. It is further found and declared that where there is in existence a condition or use of property which renders adjacent property unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of this County and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent property unsafe or inimical to safe human habitation.
- B. Such dwellings, buildings, and property may be deemed unfit due to the following reasons; dilapidation and not in compliance with applicable codes; defects increasing the hazards of fire, accidents, or other calamities; lack of adequate ventilation, light or sanitary facilities; properties that have an accumulation of weeds, trash, junk, filth, and/or other unsanitary or unsafe conditions which create a public health hazard or a general nuisance to those persons residing in the vicinity; other conditions resulting in a violation of this article which renders such dwellings, buildings, or property unsafe, unsanitary, dangerous or detrimental to the health, safety, or welfare, or otherwise detrimental to the welfare of the residents of the County; or vacant, dilapidated dwellings or buildings in which drug crimes are being committed.

48-2.

DEFINITIONS

Except as otherwise provided herein, all words shall have the customary dictionary meaning. The present tense includes the future tense; the singular shall include the plural, and the plural the singular; and the use of masculine or feminine gender is for convenience only, and the use of each shall include the other.

As used in this chapter, the term:

Applicable codes mean:

1. any optional housing or abatement standard provided in O.C.G.A. Title 8, Chapter 2, as adopted by ordinance or operation of law, or other property maintenance or solid waste standards as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property;
2. (ii) any fire or life safety code as provided for in O.C.G.A. Title 25, Chapter 2; and
3. (iii) 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, Chapter 2, 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.

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

County means Dawson County.

Drug crime means an act which is a violation of O.C.G.A. Title 16, Chapter 14, art. 2, known as the "Georgia Controlled Substances Act."

Dwellings, buildings, structures, or properties 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 and any associated property. However, as used in this article, the term "dwellings, buildings, structures, or properties" shall not mean or include any farm, any building, structure, or property 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. 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 a governing authority, any housing authority officer, or any officer who is in charge of any department or branch of the government of Dawson County or the state relating to health, fire, or building regulations or to other activities concerning dwellings, buildings, structures, or properties in the county.

Public Officer means the officer or officers who are authorized to exercise the powers prescribed by this article or any agent or designee of such officer or officers.

Repair means altering or improving a dwelling, building, structure, or property so as to bring the structure or property into compliance with the applicable codes in the jurisdiction where the property is located. This includes, but is not limited to, and the cleaning or removal of tall grass, weeds, debris, trash, and other accumulated materials which create a health or safety hazard in or about any dwelling, building, structure, or property.

Resident means any person residing in Dawson County on or after the date on which the alleged nuisance arose.

48-3. DUTY OF OWNERS

Every owner of every dwelling, building, structure, or property within Dawson County, Georgia, has the duty to construct and maintain such dwelling, building, structure, or property in conformance with the applicable Dawson County Ordinances or other applicable codes 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.

48-4. ENFORCEMENT

A. Designation of Public Officers

The Dawson County Manager, Dawson County Director of the Planning and Development, the Dawson County Marshal, Dawson County Building Official, the Dawson County Sheriff's Office and their designees are all designated and appointed to exercise the power presented by this Ordinance as Public Officers.

B. Powers of Enforcement Authorized

Each Public Officer is hereby authorized to exercise such power as may be necessary or convenient to carry out and effectuate the purpose and provisions of this Ordinance and O.C.G.A § 41-2-8 to § 41-2-17, including the following additional powers:

1. To investigate the dwelling conditions in the unincorporated area of the County in order to determine which dwellings, buildings, structures, or properties therein are unfit for human habitation or are unfit for current commercial, industrial, or business use;
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 and shall follow applicable due process of law;
4. To appoint and fix the duties of such officers, agents and employees as he/she deems necessary to carry out the purposes of this Ordinance;
5. To delegate any of his/her functions and powers under this Ordinance to such officers and agents as he may designate; and
6. To consult with any engineers or other qualified professionals in carrying out the functions and powers of this Ordinance.

C. Standards for Determining Violation

The Public Officer may determine, under existing ordinances, including, but not limited to, the Dawson County Property Maintenance Ordinance and the Dawson County Litter Control and Solid Waste Management Ordinance, that a dwelling, building, structure, or property is unfit for human habitation or is unfit for its current residential, commercial, industrial, or business use if he/she finds that conditions exist in such building, dwelling, structure, or property which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, structure or property; of the occupants of neighborhood dwellings, buildings, structures or properties; or of other residents of Dawson County, Georgia; such conditions may include the following (without limiting the generality of the foregoing):

1. Defects 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 constituting an unsanitary condition;

7. Tall grass and weeds which indicate long-term neglect, abandonment or vacancy;
8. Improperly maintained swimming pools which indicate long-term neglect, abandonment, or vacancy;
9. Dwellings, buildings or structures that have been burned and left unrepaired;
10. An accumulation of solid waste or presence of inoperable or junked vehicles or inoperable or junked marine vessels as such are defined in the Dawson County Property Maintenance Ordinance and the Litter Control and Solid Waste Management Ordinance;
11. Standing water allowed to pool in containers or on surfaces; and
12. Tire storage piles located less than fifty (50) feet from lot lines and buildings.

48-5.

COMPLAINTS RELATING TO UNFIT DWELLINGS OR STRUCTURES

- A. Whenever a written request for an investigation to be conducted using the appropriate form is filed with the Marshal's Office or notification is received from a public authority or by at least five residents of the County charging that any dwelling or building is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; or is vacant and being used in connection with the commission of illegal activities; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the Marshal's Office along with other appropriate personnel shall make an investigation or inspection of the specific dwelling, building, structure, or property.
- B. If the Marshal's Office 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 commission of illegal activities; or constitutes an endangerment to the public health or safety as the result of unsanitary or unsafe conditions, the Marshal's Office shall notify the board of commissioners of such finding and shall either issue a 30-day notice to comply or file a complaint in rem as indicated below.
- C. *Issuance of 30-day notice.* The Marshal's Office may issue and cause to be served via certified and regular mail upon the owner and any interested parties notice that the 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 illegal activities; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions. The notice shall instruct the owner to repair, alter, improve, vacate and close or demolish said dwelling, building, structure, or property within 30 days of the date the notice is mailed via regular delivery.

- D. *Filing a complaint.* If the dwelling, building, structure or property is not repaired, altered, improved, vacated and closed or demolished within 30 days, or, if the public official determines that it is in the best interest of the county to proceed without first issuing a 30-day notice, the Marshal's Office 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 interested parties for such dwelling, building, structure or property.
- E. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the owner and other interested parties; state with particularity the factual basis for the action; and contain a statement of the actions sought by the Marshal's Office to abate the nuisance. The summons shall notify the interested parties that a hearing will be held before the Magistrate Court at a date and time certain and at a place within the County where the property is located. Such hearing shall be held not less than 15 days, nor more than 45 days after the filing of said complaint in the Magistrate Court. 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.

48-6. SERVICE OF COMPLAINTS

- A. Complaints issued by the Marshal's Office pursuant to this division shall be served in the following manner. At least 14 days prior to the date of the hearing, the Marshal's Office 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. 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.
- B. For interested parties whose mailing address is unknown, a notice stating the date, time and place of the hearing shall be published in the legal organ in which the County's advertisements appear in Dawson County once a week for two consecutive weeks prior to the hearing.
- C. A notice of lis pendens shall be filed in the Office of the Clerk of Superior Court in Dawson County at the time of filing the complaint in the Magistrate Court. Such notice shall have the same force and effect as other lis pendens notices provided by law.
- D. 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.

48-7.

ORDER OF THE COURT

If, after notice and hearing as provided above, the Magistrate Court determines that the dwelling, building, structure, or property under consideration is unfit for human habitation or is unfit for its current commercial, industrial, or business use; or 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 issue an order that states in writing its 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 as follows:

- A. If the repair, alteration, or improvement of the said dwelling, building, structure, or property can be made at a reasonable cost in relation to the present value of the dwelling, building, structure, or property requiring the owner within the time specified in the order, to repair, alter or improve such dwelling, building, structure, or property 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; or
- B. If the repair, alteration or improvement of the said dwelling, building, structure, or property cannot be made at a reasonable cost in relation to the present value of the dwelling, building, structure, or property 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.

For purposes of this section, the court shall make its determination of "reasonable cost in relation to the present value of the dwelling, building, structure or property" 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 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, alternation, or improvement of the structure shall be the costs necessary to bring the structure into compliance with the applicable codes relevant to the cited violations in force in Dawson County.

48-8.

FAILURE TO COMPLY WITH ORDER OF THE COURT

If the owner fails to comply with an order of the court to repair, alter, improve, remove, close, or demolish the dwelling, building, structure, or property, the Marshal's Office may cause such dwelling, building, structure, or property to be repaired, altered, or improved or to be vacated and closed or demolished. Such abatement action shall commence within 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 270 days in which

such abatement action must commence. The Marshal's Office shall cause to be posted on the main entrance of the dwelling, building, structure, or property 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 dwelling, building or structure is prohibited and unlawful."

48-9. SALVAGE OF REUSABLE MATERIALS

If the Marshal's Office has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any money 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, according to O.C.G.A. § 41-2-9(a)(6). The Marshal's Office and Board of Commissioners 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 consistent with O.C.G.A. § 41-2-9(a)(6).

48-10. LIEN ON PROPERTY

- A. The cost of repairing, altering, improving, removing, closing or demolishing the dwelling, building or structure incurred by the Marshal's Office in accordance with exercising his/her authority as described in this Article, including all court costs, appraisal fees, administrative costs incurred by the Dawson County 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. Said 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 of Dawson County and shall relate back to the date of the filing of the lis pendens notice required in this article. 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.
- B. Upon final determination of costs, fees and expenses incurred in accordance with this section, the Marshal's Office shall transmit to the Dawson County Tax Commissioner 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 Marshal's Office shall be transmitted within 90 days of completion of the repairs, demolition or closure. It shall be the duty of the County Tax Commissioner 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 12 months of delinquency before commencing a tax foreclosure, shall not apply. The County Tax Commissioner shall remit the amount collected to the Dawson County Board of Commissioners.

- C. Enforcement of liens pursuant to this section may be initiated at any time following receipt by the Dawson County Tax Commissioner 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 section.
- D. The redemption amount in any enforcement proceeding pursuant to this article shall be the full amount of the costs as finally determined in accordance with this section, together with interest, penalties, and costs incurred by the County and the Dawson County Tax Commissioner in the enforcement of such lien. Redemption of property from the lien may be in accordance with O.C.G.A. § 48-4-80 and § 48-4-81.
- E. This section is intended to adopt and be consistent with O.C.G.A. § 41-2-9(b).

48-11. WAIVER OF LIEN

The County may waive and release any lien imposed on property if the owner of such property enters into a contract with the County agreeing to a timetable for rehabilitation of the real property or the dwelling, building or structure on the property and demonstrating the financial means to accomplish such rehabilitation.

48-12. APPELLATE REVIEW; INJUNCTION

Review of the Magistrate Court's order requiring the repair, alteration, improvement, or demolition of a dwelling, building or structure shall be by direct appeal to the Dawson County Superior Court according to O.C.G.A. § 5-3-29.

Any person affected by an order issued by the Public Officer may petition to the Dawson County Superior Court for an injunction restraining the Public Officer from carrying out the provisions of the order, and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause; provided, however, that such person shall present such petition to the court within 15 days of the posting and service of the order of the public officer. De novo hearings shall be held by the court on petitions within 20 days. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require; provided, however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction under this section.

48-13. SUMMARY PROCEEDINGS

Nothing in this Article shall be construed to impair or limit in any way the power of the County to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise when, upon a majority vote of the Dawson County Board of Commissioners, the County determines that a nuisance exists and the repair, alteration, improvement, removal, closing or demolition will not exceed \$1,000.00.