

Before the City of Columbia, Missouri

In the Matter of:)
21 PENDLETON STREET)
Columbia, Missouri 65203)
)

Public Nuisance Structure
Findings of Fact, Conclusion of Law and Order

This matter arose after code enforcement staff for the City of Columbia, Missouri (hereinafter "City") charged that the structure located at 21 Pendleton Street, Columbia, Missouri 65203 (hereinafter "Property") is a public nuisance in violation of the Code of Ordinances of the City of Columbia, Missouri (hereinafter "City Code"). The City held a public administrative hearing on the matter on May 17, 2024.

The Director of the Housing and Neighborhood Services Department for the City (hereinafter, "Director") administers and enforces the property maintenance code. It is the responsibility of the Director to preside over hearings, consider the evidence, and make a final determination. Pursuant to City Code § 6-72, Subsection 107.7, the Director shall consider the following:

- Whether the structure at 21 Pendleton Street, Columbia, Missouri 65203 (the "Property") is a nuisance and detrimental to the health, safety or welfare of the residents of the city; and
- Whether the Director shall order the structure to be repaired, reconditioned, remodeled, totally or partially vacated, demolished or placed in a sanitary condition

After due notice and process, and based on competent and substantial evidence, it is the determination of the Director that the structure at 21 Pendleton Street is a public nuisance and detrimental to the health, safety or welfare of the residents of the city. As authorized by City Code §§ 6-71 and 6-72, Subsection 107.7, the Director orders the structure be demolished. The structure on 21 Pendleton Street shall remain totally vacated until the demolition is complete.

Procedural History

The administrative hearing on this matter was held on May 17, 2024 at 9:00 AM CST in Room 1C of City Hall, 701 E. Broadway, Columbia, Missouri 65201. This public hearing was conducted on the record. There were a total of five (5) people present: Rebecca Thompson, Director of the Housing and Neighborhood Services Department for the City, presided over the hearing; Adam Kruse, Assistant City Counselor, appeared as representative for the City; Adam Friesz, Code Enforcement Specialist, provided sworn testimony; Leigh Kottwitz, Neighborhood Services Manager, observed the hearing; and, Melody Tobin, Court Reporter for Show-Me Court Reporting, took record of the hearing. There was no one present who claimed ownership, occupancy or any other interest in the Property. No members of the public were present.

Findings of Fact

1. The Property, with the address 21 Pendleton Street, Columbia, Missouri, 65203, has the following legal description:

The South Half (S 1/2) of the East Half (E 1/2) of the West Half (W 1/2), and the South Half (S 1/2) of the west fifty-three and twenty-five one-hundredths (53.25) feet of the East Half (E 1/2), of Lot Ten (10) in Bergen's Addition to the City of Columbia, Boone County, Missouri, as shown by the plat thereof recorded in Book 38, Page 566, Records of Boone County, Missouri.

(Land Records in Exhibits 2 & 3).

2. The Property is located inside the city limits of Columbia, Missouri and subject to the regulations of the City Code, including the property maintenance requirements of Chapter 6. A certified copy of applicable ordinances was admitted into evidence as Exhibit 1. (Transcript, pp. 6, 11, Exhibit 1).
3. The property is owned by Fannie Holmes. Another party, Midland Funding, LLC has a judgment against the Property in the amount of \$1,036.89. There are no occupants and the structure on the Property was ordered uninhabitable on March 28, 2022. (Transcript, pp. 13-14, 18-19, Land Records in Exhibit 3).
4. Adam Friesz, City Code Enforcement Specialist, testified that Paul Green is the son of Fannie Holmes and that, to the best of the City's knowledge, Fannie Holmes passed away on or near August 26, 2021. (Transcript pp. 27, 32).
5. Mr. Friesz testified that, except for Fannie Holmes, Midland Funding, LLC and Paul Green, there were no other owners, occupants, mortgagees, agents, or any other persons having an interest in the structure or premises of the Property. (Transcript p. 55).
6. On February 7, 2021, there was a structure fire at the Property believed to have been caused by overloading circuits, according to the testimony of Mr. Friesz. (Transcript, p. 11).
7. On March 3, 2021, all utilities, including water and electric, were shutoff at the Property due to nonpayment and the account was deactivated on July 23, 2021, according to the testimony of Mr. Friesz. The Property has not received utility service since the shutoff date. (Transcript, p p. 15, 24, 52; Utility Records in Administrative Warrant Application in Exhibit 2).
8. On March 21, 2022, Mr. Friesz performed an exterior inspection of the Property. Mr. Friesz showed pictures of the condition of the structure and testified as to his observations, which included the following: sections of roof extremely damaged by fire with a blue tarp currently covering large hole in roof of structure; sections of shingles along roof are highly damaged and coming away from the sheeting; a hole in an exterior wall in the gable end partially covered; rotting exposed wood, chipped and peeling paint, holes in siding and exterior walls; a garage door completely missing; front entry door and casing with fire damage that caused rusting and

peeling of paint around frame; trim, fascia, soffit, and guttering in disrepair or missing. In his affidavit, Mr. Friesz states that he believed the property has been vacant since March of 2021 when the utilities were shut off, that the structure fire on February 7, 2021 caused severe damage that is able to be seen from the street and that these damages have yet to be repaired. Mr. Friesz stated that given the status of the building after the fire, the lack of repairs, the available entry for weather and water into the structure, and that additional water damage has likely been taking place over the last year, there is real potential that the property is no longer structurally sound or safe. Mr. Friesz testified that he believed violations of the property maintenance code would also be present on the interior of the structure. (Transcript, pp. 16-21, 37; Affidavit of Code Enforcement Specialist in Exhibit 2; Notice of Violation in Exhibit 4; Photos in Exhibit 6).

9. On March 25, 2022, John Simon, Building Regulations Supervisor for the City, signed a Notice of Violation letter based on Mr. Friesz's observations, declaring the structure on the Property a public nuisance in violation of City Code § 6-72, subsections 107.1(4), (8), and (9), which state:

(4) Those structures which have been damaged by fire, wind or other causes so as to be dangerous to life, safety, health or welfare of the occupants or the residents of the city.

(8) Those structures which exist in violation of any provision of the Building Code of Columbia, Missouri or other ordinances of this city and which are a danger to the life, safety, health or welfare of the occupants or residents of the city.

(9) Those structures which, if occupied, would constitute a hazard to the safety, health, or welfare of the occupants because they lack maintenance, are in disrepair, are unsanitary, vermin infested or rodent infested, lack sanitary facilities or equipment or otherwise fail to comply with minimum provisions of this code.

The Notice of Violation stated that the work to bring the property into compliance is to commence within 30 days of the signed notice, April 26, 2022, and all repairs shall be completed within 180 days, September 23, 2022. (Transcript pp. 19, 28-30, Notice of Violation in Exhibit 4)

10. On March 25, 2022, Mr. Friesz mailed the Notice of Violation to Paul Green, according to his testimony. This letter was certified as delivered on March 28, 2022. (Transcript pp. 23, USPS Tracking Records in Exhibit 4).

11. On March 28, 2022, John Simon, Building Regulations Supervisor for the City, signed a Notice to Vacate Placard, that the structure on the Property was unfit for human occupancy and ordered the structure to be vacated and remain vacated until the public nuisance violations were corrected. (Transcript, p. 19, Supplement in Exhibit 2, Photos in Exhibit 6).

12. On March 28, 2022, Mr. Friesz posted the Property with the Notice of Violation and the Notice to Vacate Placard. The notices were posted in the front yard and on the doors of the structure. (Transcript pp. 18-19, Photos in Exhibits 4 and 6)

13. On April 11, 2022, Mr. Friesz mailed the Notice of Violation to Midland Funding, LLC. This letter was certified as delivered on April 14, 2022. (Transcript p. 23, USPS Tracking Records in Exhibit 4).
14. On April 14, 2022, the Notice of Violation was published in the *Missourian*, which is a newspaper of general circulation in Columbia, Missouri according to Mr. Friesz's testimony. (Transcript p. 26, Publication Record in Exhibit 4).
15. On April 26, 2022, the Judge of the Municipal Court for the City of Columbia, Missouri authorized an Administrative Search Warrant for Property. (Exhibit 2)
16. On April 29, 2022, Mr. Friesz performed an interior inspection of the Property pursuant to the Administrative Search Warrant, according to his testimony. Mr. Friesz showed photos of the condition of the interior of the structure and testified as to his observations, which included the following: extensive fire damage on the interior to the walls, rafters and roof; ceiling of the living room was caved in and missing; unsanitary conditions including burned furniture, ash, soot, garbage and debris throughout the interior and on the floor of the structure; damage to the kitchen floor from spoiled food, rotting and coming out of the refrigerator; an accumulation of rubbish and trash which blocked egress to the front entry door; the blue tarp on the roof was falling off and exposing the hole in the roof; drywall missing as either having been burned or destroyed. Mr. Friesz further observed that plumbing and fixtures show damage from fire and neglect, the bathroom water closet was incomplete and defective, the dwelling is in a condition conducive to promote harborage for vermin and unsanitary, furnace, water heater, stove and other appliances damaged from fire and neglect and in a total state of disrepair, and the electrical wiring and system damaged by fire and water in many areas and in a state of total disrepair (Transcript pp. 38-49, Administrative Search Warrant Return in Exhibit 2, Photos in Exhibit 6).
17. On April 1, 2024, Mr. Friesz posted a Notice of Hearing at the Property. The notice states the hearing will be on May 17, 2024 at 9:00 AM in City Hall, 701 E. Broadway, Columbia, Missouri in Room 1C and that Rebecca Thompson, Director of Housing and Neighborhood Services Department for the City, will preside. (Transcript pp. 53-56, Exhibit 5).
18. On April 5, 2024, Mr. Friesz mailed the Notice of Hearing to Midland Funding, LLC and Paul Green via certified mail. (Transcript pp. 53-56, Exhibit 5).
19. On April 9, 2024, the Notice of Hearing was published in the *Missourian*, which is a newspaper of general circulation in Columbia, Missouri (Transcript p. 56, Exhibit 5).
20. On May 17, 2024, the City held a public administrative hearing on the record at City Hall as to whether the structure on the Property constitutes a public nuisance. The hearing was presided over by the Director, testimony was provided on oath or affirmation, and all parties were given an opportunity to be heard. (Transcript Record, including pp. 4-6).
21. At the hearing, Mr. Friesz testified that he inspected the exterior of the property again on May 16, 2024 and the condition of the structure has not changed. He observed the hole in the roof and the exterior wall at the gable end. He testified that interested parties did not comply with

the work deadlines in the Notice of Violation, that the Property has not received utility service since the shutoff date, and that no work or building permits had been issued to the Property. Mr. Friesz testified that, to the best of his knowledge and observations, no remedial action whatsoever has been taken on the structure. (Transcript, pp. 52-53).

22. Mr. Friesz testified that he has over ten (10) years of construction experience in residential rehabilitation, roofing, electrical work, and concrete work. He has been a Code Enforcement Specialist with the City for three (3) years, and he has conducted over one hundred (100) inspections of properties in that time. Mr. Friesz testified that he is duly certified by the International Code Council as a property maintenance inspector. (Transcript, pp. 8-9).

23. Mr. Friesz testified that, based on his education, training, experience and observations, the structure at 21 Pendleton Street is in such a condition that it is dangerous to any occupants, and that, to deem the structure habitable again, would take almost a full remodel down to the structural studs. Mr. Friesz testified the structure could not be reasonably repaired since the actual weight-bearing portions of the structure were damaged by the fire and that all the electrical wiring would have to be gutted due to fire damage and exposure to water. Mr. Friesz testified that a 'facelift' is not what is needed, that someone working on the structure would have to go all the way down to the studs and basically start from scratch. Mr. Friesz testified that his recommendation would be for the structure to be demolished. (Transcript, pp. 57-59).

Conclusions of Law

A. General

The Director administers and enforces the property maintenance code as authorized by City Code § 6-72, Subsection 103.1. It is the responsibility of the Director to preside over hearings, consider the evidence, and make a final determination. City Code § 6-72, Subsections 107.6, 107.7. The determination shall consider whether the Property is within the city limits and subject to the jurisdiction of the City, and also whether the City met all of its procedural obligations to provide proper notice and an opportunity for parties to contest the charge at an administrative hearing. City Code § 6-72, Subsections 107.2, 107.4, 107.5, 107.6.

For findings on the public nuisance charge, pursuant to City Code § 6-72, Subsection 107.7, the Director shall consider the following:

- Whether the structure at 21 Pendleton Street, Columbia, Missouri 65203 (the "Property") is a nuisance and detrimental to the health, safety or welfare of the residents of the city; and
- Whether the Director shall order the structure to be repaired, reconditioned, remodeled, totally or partially vacated, demolished or placed in a sanitary condition.

B. Proper Notice and Opportunity

The Property is located within the city limits of Columbia, Missouri and subject to the City Code, including the property maintenance requirements of City Code §§ 6-71 and 6-72.

In consideration of the sworn testimony and evidence in the record, it is the determination of the Director that the City has met its procedural obligations in this case as required by City Code § 6-72, Subsections 107.2, 107.4, 107.5, 107.6. In particular, the Director finds the following is true: the City sent proper Notice of Violation per Subsection 107.2; the noticed parties failed to commence work within the time specified by the Notice of Violation per Subsection 107.4; the City then sent a proper Notice of Hearing under Subsection 107.5; and, the City held a public administrative hearing on the record in accordance with the procedural requirements of Subsection 107.6.

C. Public Nuisance Structure

- Whether the structure at 21 Pendleton Street, Columbia, Missouri 65203 (the “Property”) is a nuisance and detrimental to the health, safety or welfare of the residents of the city

A structure constitutes a public nuisance if it is found to be in violation of City Code § 6-72, Subsection 107.1. In this matter, the City alleges the structure at the Property is in violation of Subsection 107.1(4), (8), and (9), which state as follows:

(4) Those structures which have been damaged by fire, wind or other causes so as to be dangerous to life, safety, health or welfare of the occupants or the residents of the city.

(8) Those structures which exist in violation of any provision of the Building Code of Columbia, Missouri or other ordinances of this city and which are a danger to the life, safety, health or welfare of the occupants or residents of the city.

(9) Those structures which, if occupied, would constitute a hazard to the safety, health, or welfare of the occupants because they lack maintenance, are in disrepair, are unsanitary, vermin infested or rodent infested, lack sanitary facilities or equipment or otherwise fail to comply with minimum provisions of this code.

107.1(4)

The testimony and evidence admitted at hearing, including photos of the Property, show extensive fire damage on the interior and exterior of the structure to the walls, rafters, and roof, there are holes in the roof and the exterior walls exposing it to water damage, there is heat damage to the front entry door and frame, the structure is covered in burnt furniture, ash and soot, a ceiling in the living room of the structure had caved in and was missing, damage to plumbing and fixtures from fire and neglect, and damage to the electrical wiring and system from fire and water. The condition of the property is conducive to promote harborage for vermin and increased danger of structural collapse. It is the determination of the Director that the structure has been damaged by fire, wind or other causes to the extent it is dangerous to occupants or residents of the city, and the structure is in violation of Subsection 107.1(4).

107.1(8)

The structure on the Property is in violation of other portions of the property maintenance code including City Code §§ 6-71 and 6-72, Subsections 301.3 (Vacant structures and land), 304.13 (Window, skylight and door frames), 304.6 (Exterior walls), 304.7 (Roofs and drainage), 305.1 (Interior General), 305.3 (Interior Surfaces), 505.1 (Plumbing general), 603.1 (Mechanical equipment and appliances), and 604.1 (Facilities required). The violations in the current condition of the property include: the dwelling is in a condition that is conducive to promote harborage for mice, rats and vermin and is very unsanitary; heat damage to the front entry door and frame, holes in the exterior walls and rotting exposed wood; lack of a sound roof; interior damage by fire and water with trash, debris and construction materials covering the floor; the walls, floors, and ceiling have fire damage and have been exposed to water and weather, construction materials have begun to rot; plumbing and fixtures show damage from fire and neglect, and the bathroom water closet is incomplete and defective; furnace, water heater, stove and other appliances were damaged from fire and neglect, and are in a state of total to partial disrepair; electrical wiring and system found damaged by fire and water and is in a state of total disrepair. These violations make the structure a danger to the life, safety, health and welfare of occupants or residents of the city. It is the determination of the Director that the structure constitutes a nuisance in that it is in violation of Subsection 107.1(8).

107.1(9)

There have been no improvements made on the property since the structural fire in February of 2021. The structure has extensive fire damage to the walls, rafters and roof, it is filled with burnt furniture, ash, soot, trash and debris, it has had no utility service including water or electricity since March of 2021, and it has no functioning sanitary facilities. Due to the lack of maintenance, disrepair, and unsanitary condition of the property, the property would be a hazard to the safety, health or welfare of the occupants. It is the determination of the Director that the structure constitutes a nuisance as it is in violation of 107.1(9).

The structure on the Property is in violation of City Code § 6-72, Subsections 107.1(4), (8) and (9). In consideration of the sworn testimony and exhibits admitted into evidence at the hearing on May 17, 2024, the Director finds that the structure on the Property, located at 21 Pendleton Street, is a public nuisance and detrimental to the health, safety, or welfare of the residents of the city. The Director makes these findings based on the competent and substantial evidence provided on the record at the hearing.

D. Proper Order for a Public Nuisance Structure

- Whether the Director shall order the structure to be repaired, reconditioned, remodeled, totally or partially vacated, demolished or placed in a sanitary condition

If a structure is determined to be a public nuisance, then the Director shall use the standards provided in the City's Property Maintenance Code as guidance to determine how to remedy the public nuisance. City Code § 6-72, Subsection 107.3. If the structure on the Property can be reasonably repaired, reconditioned or remodeled so that it will no longer exist in violation of this code, it shall be ordered repaired, reconditioned or remodeled. Subsection 107.3(1). If the structure is in such a condition as to make it dangerous to the health, safety or general welfare of its occupants or any other person, it shall be ordered repaired, reconditioned, remodeled or

demolished. Subsection 107.3(2). In all cases where the structure is not, or cannot be, repaired, reconditioned or remodeled so that it will no longer exist in violation of the requirements of the City's Property Maintenance Code, then it shall be demolished. Subsection 107.3(3). If the structure is a hazard because it lacks sanitary facilities and equipment or is otherwise unsanitary because of an accumulation of garbage or trash or infestation, then the Property shall be either placed in a clean and sanitary condition or demolished. Subsection 107.3(4).

Mr. Adam Friesz has ten (10) years of construction experience, inspected over 100 properties, and is certified with the international code council. Mr. Friesz's testimony is compelling and consistent with the photos taken of the exterior and interior of the structure. The extensive fire damage to the walls, rafters and roof raise legitimate concerns of the integrity of the structure. The ceiling in the living room caved in and is missing, there are holes in the roof and exterior walls. The plumbing and electrical wiring are damaged from fire, water and neglect. The structure has had no utilities since March 2021. The condition of the property is worsening over time with evidence of rot and exposure to the elements; there has been no remedial action taken on the structure since the fire in February 2021. Mr. Friesz testified that the structure cannot be reasonably repaired, reconditioned or remodeled as the problem is with the studs, walls, rafters, and roof. All the electrical wiring would have to be gutted due to damage from fire and water. And, the structure is in an extremely unsanitary condition; there is an accumulation of burnt items, ash, soot, garbage and debris, there are no sanitary facilities or equipment and the structure has received no utilities, including electric or water, since March of 2021. Mr. Friesz's testimony is persuasive in that anyone wanting to remove the existing dangers and hazards of the structure would have to start from scratch.

It is the determination of the Director that the structure at the Property shall be demolished. This determination is made based on competent and substantial evidence provided on the record at the hearing.

[See Order on Following Page]

Order

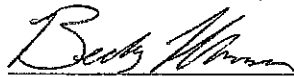
After due notice and process, and based on competent and substantial evidence, it is the determination of the Director of the Housing and Neighborhood Services Department for the City of Columbia, Missouri that the structure located at 21 Pendleton Street, Columbia, Missouri 65203 (the "Property") is a public nuisance and detrimental to the health, safety or welfare of the residents of the city. Pursuant City Code § 6-72, Subsection 107.7, the Director hereby orders that the structure at 21 Pendleton Street, Columbia, Missouri 65203, shall be demolished. The demolition shall include grading and filling to the extent necessary, and all debris removed in order to assure that the Property is no longer a nuisance or a hazard to any occupants or other persons of the city. The structure on the Property shall remain totally vacated until the demolition has occurred.

It is so ordered that Paul Green and Midland Funding, LLC be immediately mailed a copy of these findings and a copy be posted upon the Property. Any party to this proceeding with an interest in the Property shall commence the demolition within thirty (30) days of the date of this notice. All demolition and debris removal shall be in accordance with the law and completed within sixty (60) days of the date of this notice.

If the demolition is not completed and within the time specified, and there is no appeal pending, then the Director will certify those facts to City Council for the City of Columbia, Missouri, as provided by City Code § 6-72, Subsection 107.9. At that time, City Council may order the City Manager to have the work done by City staff or bidding out the work through the City's Purchasing Division. The actual costs of performance, including administrative costs to the Finance Director, will be submitted to the owner of the Property. If the costs are not paid within thirty (30) days, then a special tax bill against the property will be prepared and collected.

This order shall not be considered a waiver of any rights of the City, including but not limited to City Code § 6-72, Subsections 107.10 and 107.11.

This order shall be in full force and effect as of the date of the signatory below.



Rebecca Thompson
Director
Housing and Neighborhood Services Department
City of Columbia, Missouri

Date: 07/09/2024

Notice of Appeal Rights

An aggrieved party may appeal to the circuit court pursuant to the procedures established in Chapter 536 of the Revised Statutes of Missouri.