

**ROSEVILLE**  
**REQUEST FOR COUNCIL ACTION**

Date: 07/20/2009

Item No.: 13.c

Department Approval

City Manager Approval



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Item Description: **Discussion regarding Hazardous Building Law.**

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1 **BACKGROUND**

2 At the June 29, 2009 City Council, Councilmember Ihlan requested that information regarding the State  
3 of Minnesota's Hazardous Building Law be brought forward to the City Council for discussion. Staff  
4 has attached a memo regarding the law prepared by Jay Squires, City Attorney, dated April 3, 2009 and  
5 has attached information from the League of Minnesota Cities regarding hazardous buildings.

6 **POLICY OBJECTIVE**

7 The City goals within the Comprehensive Plan are to protect and improve property values (Goal 3, 4,  
8 and 5; page 6 and, Section 3) and to adhere to performance standards which protect the integrity of  
9 neighborhoods (Policy 6, page 8, Section 3).

10 **FINANCIAL IMPACTS**

11 Under the Hazardous Building Law, cities would declare a building hazardous and order the building to  
12 be repaired or torn down. The costs for the work are ultimately are collected from the affected property  
13 owners. However, initially, the City would be required to carry the costs.

14 **STAFF RECOMMENDATION**

15 This item is being brought for discussion purposes at this time.

16 **REQUESTED COUNCIL ACTION**

17

18 Will be based on discussion.

Prepared by: Patrick Trudgeon, Community Development Director (651) 792-7071

Attachments: A: Letter dated April 3, 2009 from Jay Squires  
B: Information from the League of Minnesota Cities regarding the Hazardous Building Law

Jay T. Squires  
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jts@ratwiklaw.com

April 3, 2009

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Mr. Pat Trudgeon  
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RE: *Condemnation of Buildings*  
Our File No. 4002(1)-0001

Dear Bill and Pat:

I understand the Council on March 30 discussed dilapidated structures in Twin Lake. The Council requested general information on options available to the City to deal with the same.

Option One is to deal with the building as a nuisance under Chapter 407 of City Code. Under this chapter, buildings that are in poor condition can be addressed through the nuisance process. While this process is more common for residential properties, it has been utilized for commercial properties, ie the former Anderson Steakhouse next to Fuddrucker's at Snelling and County Road C.

Option Two is to deal with the property under the Hazardous Building Law, Minn. Stat. §§ 463.15-.23. Under this law, the City may seek court permission to raze a structure if the structure meets the definition of "hazardous building," which is defined as:

Any building or property, which because of inadequate maintenance, dilapidation, physical damage, unsatisfactory

Mr. Bill Malinen  
Mr. Pat Trudgeon  
April 3, 2009  
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conditions, or abandonment, constitutes a fire hazard or a hazard to public safety or health.

Minn. Stat. § 462.15.

The Hazardous Building Law process is a judicial process involving the district court. Ultimately, if the court approves the removal or abatement of the hazardous building, the costs of removal may be assessed against the property (along with attorneys' fees).

Option Three would involve an outright condemnation of the property. Given the likely nature of such an action in Twin Lakes, an outright condemnation would presumably require the City to demonstrate that the conditions of "blight" existed, or that the building was "structurally substandard" as these terms are defined in Minn. Stat. § 117.025.

I hope this at least preliminarily addresses the questions raised by the Council. Let us know if you need further information.

Regards,

Jay T. Squires

JTS/sem

RRM: #129812

Minn. Stat. § 145A.01-.12.

Under the “Local Public Health Act,” a board of health may take actions to remove and abate these public health nuisances. The governing board of a city or county may establish a board of health. However, most cities do not have their own board of health. Therefore, dealing with garbage houses is often up to the county board of health and not the city.

Minn. Stat. § 145A.04, subd. 8(a); Minn. Stat. § 145A.02.

One of the board’s duties is to deal with threats to public health. If there is a threat to the public health, such as a public health nuisance (e.g., any activity or failure to act that adversely affects the public health), a source of filth, or a cause of sickness found on any property, the board of health (or its agent) must order the owner or occupant of the property to remove or abate the threat. Generally, if the owner, occupant, or agent does not comply with the requirements of the notice, then the board of health (or its agent) must remove or abate the nuisance, source of filth, or cause of sickness described in the notice.

## **A. Local ordinances**

Minn. Stat. § 145A.05, subds. 1, 7.

Both the county and the city have some authority to adopt ordinances related to public health. The county board may adopt ordinances for all or part of its jurisdiction to regulate actual or potential threats to the public health, including ordinances to define public health nuisances and provide for their prevention or abatement. However, these ordinances cannot be preempted by, be in conflict with, or be less restrictive than standards set out in state laws or rules. The city council may also adopt ordinances relating to the public health authorized by law or by an agreement with the commissioner of health. The ordinances cannot conflict with or be less restrictive than ordinances adopted by the county board or state law.

Minn. Stat. § 145A.05, subd. 9

If there is a community health board in place of a board of health, it may recommend local ordinances pertaining to community health services to the city council or county board within its jurisdiction.

Minn. Stat. § 145A.10, subd. 9

## **VIII. Hazardous buildings**

Minn. Stat. §§ 463.15-261.

Minnesota law provides authority and a process to deal with hazardous buildings. This process allows the city to order a property owner to repair or remove a hazardous condition, or in extreme cases, to raze the building. If the owner does not do the work, the city may do so and charge the costs against the property as a special assessment. The law requires that the court oversee or be involved during most of the process. As such, it is very important to work with the city attorney. The city attorney will be needed to draft documents, file court papers, appear in court, and provide specific legal advice throughout the process.

Minn. R. 1300.0180; Minn. R. 1311.0206

Where applicable, the Minnesota State Building Code requires that all unsafe buildings and structures must be repaired, rehabilitated, demolished, or removed according to the statutory hazardous building provisions.

Minn. Stat. § 463.26  
*City of Minneapolis v. Meldahl,*

Hazardous building laws are supplementary to other statutory and charter provisions. This means cities may enact and enforce ordinances on the same

607 N.W.2d 168, 171  
(Minn.App.2000).

subject. Any ordinance that is passed must allow for due process and cannot contradict state law. The city should seek advice from the city attorney if it wishes to adopt this type of ordinance.

## **A. Characteristics of a hazardous building**

Minn. Stat. § 463.15, subds. 2,3

State law defines a hazardous building or hazardous property as “any building or property which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment constitutes a fire hazard or a hazard to public safety or health.” A building is defined as “any structure or part of a structure.” For purposes of this memo, the phrase hazardous building will be used to include hazardous property and structures.

*Ukkonen v. City of Minneapolis*,  
160 N.W.2d 249, 250 (1968).

Determining whether a building is hazardous depends on the particular facts of each situation. For example, in one opinion where the Minnesota supreme court upheld a city’s order to raze a hazardous building, the court described the building in question as having the following conditions:

- Unoccupied.
- Badly deteriorated sections of concrete block foundation.
- Decayed and rotted wooden foundation sills.
- Broken, deteriorating, and falling siding.
- Rotted and collapsing roof cornice.
- Large holes in asphalt roof covering.
- Evidence of roof leaks.
- Large holes in the plaster finish of walls and ceilings.
- Many broken window lights.
- Damaged or destroyed window sashes.
- Dry water traps in wash basin and water closet resulting in open sewers.
- Paper, lumber, wood lath, plaster, and debris littering interior of building.

These are not the only conditions that would cause a building to be considered “hazardous.” Rather, these are examples of the types of things that might be present in a hazardous building. While this example shows that there were many problems with this building, there is no formula to determine how many problems make a building hazardous. Again, that depends on the particular situation.

## **B. Identifying a hazardous building**

If the city believes there is a building that may be hazardous, it is a good idea for the city to gather and document information about the building. An

See Section II *Entering private property*.

LMC information memo, *Meetings of City Councils*.

*Rostamkhani v. City of St. Paul*, 645 N.W.2d 479 (Minn. Ct. App. 2002).

Minn. Stat. § 463.15

*Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 484-85 (Minn. Ct. App. 2002); *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 562 (Minn.App.2001); *Tessmer v. City of St. Paul*, No. A07-2349, 2008 WL 5215938 (Minn. Ct. App. Dec. 16, 2008) (unpublished opinion)

LMCIT risk management information memo, *Exercising Discretion: Keeping Records to Support Immunity*.

See Section III *Due process*.

inspection of the property may provide information that may help the council determine if the building is hazardous. While inspecting the property, it is helpful to take detailed notes and photographs of what was observed. Because there are constitutional limitations on entering private property, the city should consider how it will lawfully enter the property to make the inspection.

Before the council orders a hazardous condition to be repaired or removed, the council must first make a determination that the building is hazardous. This must be done during an open city council meeting. At the meeting, it is advisable that the city council consider all the relevant evidence it has, such as any inspection notes or reports, photographs of the property, code violations, and any other information related to the property, including any information provided by the property owner or occupant. It is also advisable to keep in mind the statutory definition and consider how the evidence relates to this definition.

The decision to repair or remove a hazardous condition, or to raze a building, must not be arbitrary or capricious. A decision is arbitrary or capricious if it is unreasoned and does not consider the facts and circumstances of the situation. Said another way, the city's decision must be reasoned and supported by substantial evidence. It is a good idea for the council to keep a detailed record of the discussion, the evidence considered, and the ultimate decision that was reached based on the evidence considered. This record will help the city defend its decision if it is later challenged in court.

Although the law does not explicitly require the property owner to be notified of the council consideration of the property, it is advisable to take steps to ensure the property owner's due process rights are respected. One way to do this may be to notify the property owner that the issue will be discussed and to allow the owner a chance to speak with the council and provide any evidence or information that he or she may have. Notice to tenants as well as lien-holders may also be advisable. Notice may also lead to self-remedy of the hazardous conditions.

## C. Removal or repair by consent

Minn. Stat. § 463.151

One method of dealing with a hazardous condition or building is to approach the property owner to ask him or her to voluntarily repair or remove the hazardous condition or to raze the hazardous building. If the owner will not or cannot voluntarily repair or remove the hazardous condition, the city may obtain written consent of all owners of record, occupying tenants, and all lien-holders of record that allows the city to make the repair or remove the hazardous condition. The "owner," "owner of record," and "lien-holder of record" are persons that have a right or interest in the property and have recorded their interest with the county recorder or registrar of titles in the county where the property is located.

Minn. Stat. § 463.15, subd. 4

Minn. Stat. § 463.151; Minn. Stat. § 463.21; Minn. Stat. §§

If the city does the work, the costs that the city incurs in repairing or

429.061-.081.

See Section V D 4 *Recovering costs*.

LMC information memo, *Special Assessment Guide*.

removing the hazardous condition are charged against the property as a lien against the real estate. This lien is levied and collected as a special assessment. The city council may provide that the assessment may be paid in five or fewer equal annual installments with interest at 8 percent per year. As an alternative to the lien, the city can recover the costs by obtaining a court judgment against the owner of the real estate.

See Section VIII D *Removal or repair by order*.

If the property owner voluntarily remedies the problem, or if the city obtains consent and remedies the problem, the city may be able to avoid the lengthy process used when there is no consent. However, neither of these options is required by law. The city may choose not to use these options, but rather proceed straight to removal or repair by order. Similarly, if the city's attempts to use these two methods fail, the city may proceed by ordering the repair or removal.

## D. Removal or repair by order

*Village of Zumbrota v. Johnson*, 161 N.W.2d 626 (Minn. 1968).

*City of Wells v. Swehla*, No. C3-00-319, 2000 WL 1577087 (Minn. Ct. App. Oct. 17, 2000) (unpublished decision); *In the Matter of a Hazardous Building Located at 303-5th Ave. NE, in the City of Cambridge*, No. C3-99-1382, 2000 WL 136017 (Minn. Ct. App. Feb. 8, 2000) (unpublished decision).

The Minnesota supreme court has said that a city should use its authority under the hazardous building process prudently in order to avoid unnecessary infringement on the property owner's rights. The city must be especially cautious when ordering a hazardous building to be razed. Minnesota courts have further stated that, although the statute gives the city the discretion to decide whether a building should be removed or repaired, destruction of a hazardous building should not be authorized unless it can be shown that the hazardous conditions cannot be removed or repaired. Therefore, the property owner should be given reasonable amount of time to repair or remove the hazardous conditions; failure to make repairs or remove hazardous conditions may be grounds to allow the city to demolish the building.

### 1. The order to remove or repair

Minn. Stat. § 463.16; Minn. Stat. § 463.17, subd. 1.

Model Resolution Ordering the Repair or Removal of Hazardous Conditions; Model Resolution Ordering the Razing of a Hazardous Building.

If the council determines that a building is hazardous, the council may adopt an order declaring the building to be hazardous and ordering the owner to repair or remove the condition or raze the building. The order is usually done by resolution. The order to repair or remove a hazardous condition or to raze a hazardous building must be in writing and must:

- Recite the grounds or basis for the order.
- Specify the necessary repairs, if any, and provide a reasonable time to comply with the order.
- State that a motion for summary enforcement of the order will be made to the district court of the county in which the hazardous building or property is situated unless corrective action is taken, or unless an answer is filed within the time specified in section 463.18, which is 20 days.

Minn. Stat. § 463.18

*In the Matter of a Hazardous Building Located at 303-5th Ave. NE, in the City of Cambridge*, No. C3-99-1382, 2000 WL 136017 (Minn. Ct. App. Feb. 8,

In preparing the order, it is important that the city take care to specify the necessary repairs. The order must be specific enough to give the property owner notice of the alleged hazardous conditions. One way to do this is to list the hazardous conditions individually in an explanatory manner. A

2000) (unpublished decision); *Village of Zumbrota v. Johnson*, 161 N.W.2d 626 (Minn. 1968).

Minn. Stat. § 463.17, subd. 2

Minn. Stat. § 463.15, subd. 4

Minn. Stat. § 463.17, subd. 2

LMC information memo,  
*Newspaper Publication*.

Minn. Stat. § 469.201-.207.

general statement that the owner “must eliminate hazardous conditions” is likely not specific enough.

The council’s order must be served upon the property owner of record, or the owner’s agent if an agent is in charge of the building, any occupying tenants, and all lien-holders of record. (“Owner,” “owner of record,” and “lien-holder of record” are any people that have a right or interest in the property and evidence of this interest is recorded in the office of the county recorder or registrar of titles in the county where the property is situated.) The service of the order must be done in the same manner as the service of a summons in a civil court action. To make sure the order is properly served, the city may hire a professional process server.

If the owner cannot be found, the order is served by posting it at the main entrance to the building. In addition to posting, the order must be published for four weeks in the official city newspaper; if there is no official city newspaper, then the order is published in a legal newspaper in the county.

A city with a Targeted Neighborhood Revitalization Program may assess a penalty of up to 1 percent of the market value of the real property for any building in the city that the city determines to be hazardous. Because there are statutory requirements that must be met in order to do so, the city should work with its city attorney.

### **a. Removal of personal property and fixtures**

Minn. Stat. § 463.24

If personal property or fixtures are in the building, the city may address these items in the order. Personal property is anything that is subject to ownership that is not classified as real property; some examples of personal property are furniture, clothing, and televisions. A fixture is an item of personal property that is attached to the property or building and is considered part of the building; some examples of fixtures are built-in appliances, water heaters, and cabinets.

Minn. Stat. § 463.24; Minn. Stat. § 463.21

If personal property or fixtures will unreasonably interfere with the work to be done, or if the razing or removal makes removal of the property necessary, the order may direct the removal of the personal property or fixtures within a reasonable amount of time. If the property or fixtures are not removed in the specified timeframe and the council enforces the order, the council may sell any valuable personal property, fixtures, or salvage at a public auction after three days posted notice. If the items do not have any appreciable value, the council may have them destroyed.

## **2. Responding to the order**

Minn. Stat. § 463.18; Minn. Stat. § 463.20

Once the order is served on the appropriate people, any one of those people may contest the order. This is done by “answering” the order. The answer must specifically deny the facts in the order that are disputed. The answer to the order must be served within 20 days from the date the order was served. The answer is served in the manner provided for the service of an answer in a civil court action. When an answer is filed, the court will become involved like any other law suit. This situation is called a “contested case.”

Minn. Stat. § 463.19

If no one answers the order, the proceedings are a “default case.” Although there may be no answer to the order, the city must still seek a court judgment to enforce the order.

### **a. Court judgment: Contested case**

Minn. Stat. § 463.20

Where an answer to the order is filed, the proceedings are treated like any other civil action, except this type of action has priority over all other pending civil actions. A contested case has the attributes of a civil law suit, such as filing documents with the court, gathering evidence, and a trial.

Minn. Stat. § 557.02

Because this type of case deals with a person’s interest in his or her real property, it is a good idea for the city to file a “lis pendens” with the county recorder at the start of the case. The lis pendens filing gives potential purchasers notice about the hazardous building proceedings. A lis pendens must include the names of the parties in the suit, the object of the law suit, and a description of the real property involved. At the end of the proceeding, it is a good idea to file a notice that the lis pendens is discharged.

Minn. Stat. § 463.20; *In the Matter of a Hazardous Building Located at 303-5th Ave. NE, in the City of Cambridge*, No. C3-99-1382, 2000 WL 136017 (Minn. Ct. App. Feb. 8, 2000) (unpublished decision); *City of Wells v. Swehla*, 2000 WL 1577087 (Minn. App. Oct 17, 2000) (unpublished decision)

After a trial, the court may or may not uphold the order issued by the city. The court may modify the order, including adding other hazardous conditions that need to be repaired or removed, so long as there is evidence to support the change. When considering the city’s order, the district court must consider the possibility of repairing the building.

Minn. Stat. § 463.20.

If the court upholds the order, with or without modification, the court enters judgment in favor of the city. The court also sets a time in which the hazardous condition must be repaired or removed or the building must be razed in compliance with the order. If the court does not uphold the order, the court annuls the order and sets it aside. Either way, the court administrator must mail a copy of the judgment to everyone originally served with the order.

Minn. Stat. § 463.161

If the court issues an opinion that gives the property owner a specified amount of time to fix or remove the hazardous conditions, the city generally cannot take action in that time period unless the order so authorizes. The city may ask the court to require the property owner to provide the city with ongoing access to inspect the progress and work. Generally, if at the end of the time period the owner has not fixed or removed the hazardous conditions, the city may repair or remove the hazardous condition or raze the hazardous building. Consult the city attorney to determine if any additional court orders are necessary.

### **b. Court judgment: Default case**

Minn. Stat. § 463.19

Minn. Stat. § 463.17, subd.3

If no one files an answer to the city’s order, it becomes a default case. The city still needs to ask the court to enforce the city’s order; this is done by a motion to enforce the order. A motion is a type of court hearing where the city asks the court to do something. At least five days before filing the motion to enforce the order, the city must file a copy of the order and proof

of service with the court administrator of the district court of the county where the hazardous building is located.

Minn. Stat. § 463.17, subd. 3

Minn. Stat. § 557.02

At the time of filing the order and proof of service with the district court, the city must also file a lis pendens notice with the county recorder or registrar of titles. This is called a “lis pendens.” The notice should also include the names of the parties and the purpose of the action. If the city abandons the hazardous building order proceeding, it must file a notice to that effect with the county recorder within 10 days. At the end of the proceeding, the city should file a notice that the lis pendens is discharged.

Minn. Stat. § 463.19

There will be a court hearing on the motion to enforce the order. The city will present any evidence that the court requires. The court may then affirm or modify the order and enter judgment accordingly. The court will also set a time after which the council may enforce the order. The court administrator will mail a copy of the judgment to all people who were served with the original order.

### 3. Doing the work

Minn. Stat. § 471.345

If the city is authorized by the court to remove or repair a hazardous condition or to raze a hazardous building, the city council will need to determine the best way to get the work done. In some circumstances, city employees may be able to do the work. In other situations, the city council may need to hire someone to do the work. Depending on the work to be done, the competitive bidding laws may apply.

Minn. Stat. § 463.21; Minn. Stat. § 463.24

When doing the work to remove or repair a hazardous condition or raze a hazardous building, there may be personal property or fixtures that need to be removed. If the original order included a provision ordering the property owner or tenant to remove personal property or fixtures, and the owner did not comply with the provisions in the order, the city may remove the property and fixtures. It is a good idea to keep an inventory of all items removed from the property so that the city has a record if questions arise later about what was removed. The city may also sell any salvage materials at the public auction. The auction must be posted for three days prior to the auction. If the items have no appreciable value, the city may destroy them.

Model Notice for Public Auction.

### 4. Recovering costs

Minn. Stat. § 463.22  
Model Resolution Adopting  
Expense Report.

Throughout the hazardous building process, the city must keep an accurate account of the expenses it incurs in carrying out and enforcing the order. At a minimum, this account must include the following expenses:

- Filing fees.
- Service fees.
- Publication fees.
- Attorney’s fees.
- Appraisers’ fees.

- Witness fees, including expert witness fees.
- Traveling expenses incurred by the municipality from the time the order was originally made.

Minn. Stat. § 463.22

This is not an exhaustive list of expenses, so other expenses incurred by the city should also be included. The city must credit the account with the amount received, if any, from the sale of the salvage, building, or structure.

Minn. Stat. § 463.22

*City of Delano v. Abene*, No. C0-01-983, 2001 WL 1570961 (Minn. Ct. App. Dec. 11, 2001)(unpublished decision); *City of Litchfield v. Schwanke*, 530 N.W.2d 580 (Minn. Ct. App. 1995).

The city must report any actions it has taken under the order, including a statement of money received and expenses incurred, to the court for approval and allowance. Upon examination, the court may correct the expenses and determine the amount the city is entitled to receive. The court may also determine the reasonableness of the expenses. Then the court allows the expense account. Even where a court has significantly modified the original city order, the city may be awarded expenses.

Minn. Stat. § 463.22

Minn. Stat. § 463.161, subd. 3; Minn. Stat. § 463.21; Minn. Stat. §§ 429.061-081.

LMC information memo, *Special Assessment Guide*.

*Gadey v. City of Minneapolis*, 517 N.W.2d 344 (Minn. Ct. App. 1994).

If the amount received from the sale of salvage or property does not equal or exceed the amount of expenses allowed by the court, the court's judgment will certify the deficiency to the city clerk for collection. The owner or another interested party must pay the deficiency amount by October 1. The city cannot add on a penalty to this amount. If the payment is not made by October 1, the clerk must certify the amount of the deficiency amount to the county auditor to be entered on the county tax lists as a special assessment against the property. The deficiency is collected in the same manner as other taxes. The amount collected by the county must be paid into the city treasury. The city council may provide that the assessment may be paid in five or fewer equal annual installments with interest at 8 percent per year.

Minn. Stat. § 463.21

An alternative to using a special assessment against the property is to recover the costs by obtaining a court judgment against the property owner.

Minn. Stat. § 463.22

If the amount received for the sale of the salvage or the building exceeds the allowed expenses incurred by the city, and there are delinquent taxes against the property, the court will direct that the excess shall be paid to the county treasurer to be applied to the delinquent taxes. If there are no delinquent taxes, the court will direct the surplus to be paid to the owner.

Minn. Stat. § 463.23

The net proceeds of any sales of property, fixtures, or salvage must be paid to the persons designated in the judgment in proportion to their interest. Accepting this payment waives all objections to the payment and the proceedings. If any party to whom a payment of damages is made is not a resident of the state, or the place of residence is not known, the party is an infant or under a legal disability, refuses to accept payment, or if it is doubtful to whom the payment should be made, the city may pay the amount to the clerk of courts to be paid out under the direction of the court. Unless there is an appeal to the payment, the deposit with the clerk is considered a payment of the award.