

**RESOLUTION NO. 16-35**

**A RESOLUTION ORDERING THE ABATEMENT OF CONDITIONS CREATING A NUISANCE AND A HAZARDOUS PROPERTY EXISTING AT 35 WOODLAWN AVENUE, IN THE CITY OF TONKA BAY**

**WHEREAS**, the property located at 35 Woodlawn Avenue, legally described on Exhibit A, attached hereto, which contains a single-family dwelling (the “Subject Property”); and

**WHEREAS**, a physical inspection by the City Building Official, City Administrator, County Health Personnel, and Fire Inspection of the Subject Property on July 20, 2016 found that the building and surrounding yard area are filled with excessive rubbish, insect and rodent harborages, chipping paint, screenless windows, a portable toilet apparatus, and other conditions which are injurious to public health; and

**WHEREAS**, due to the nature and extent of the rubbish collection on the interior of the Subject Property, the Building Official was unable to opine as to the structural integrity of the Subject Property; and

**WHEREAS**, the City has communicated its intent to the owner of the Subject Property on numerous occasions that if the owner failed to comply with the applicable City codes, the City would institute a hazardous building action; and

**WHEREAS**, by notice dated May 23<sup>rd</sup>, 2016 the owner was ordered by the City of Tonka Bay to repair these items; and

**WHEREAS**, the owner did not complete the repairs as required by the notice; and

**WHEREAS**, the City Administrator has determined that the exposed high voltage electrical wiring, the dilapidated windows, siding, soffits and fascia, and the broken doors are a violation of Sections 1130.02 and 1130.03 of the City Code and create hazardous and nuisance conditions and that the City must perform all work necessary in order to abate the hazardous and nuisance conditions on the Subject Property unless the owner performs all work set out in the attached order; and

**WHEREAS**, Edward H. Sakry and Barbara F. Sakry, married and joint tenants, are the owners of the Subject Property and have taken no or minimal steps to abate the hazardous conditions; and

**WHEREAS**, Minnesota Statutes, Section 463.161 authorizes the governing body of any city or town to order the owners of any hazardous building within the municipality to correct or remove the hazardous condition; and

**WHEREAS**, Minnesota Statutes, Section 463.15, subdivision 3 defines a “hazardous building” as “any building..., which because of inadequate maintenance, dilapidation, physical

damage, unsanitary condition or abandonment, constitutes a fire hazard or a hazard to public safety or health;” and

**WHEREAS**, Minnesota Statutes, Section 463.161 et seq. authorizes a city to correct or remove a hazardous condition of any hazardous building if the owner of record fails to do so after a reasonable time and the district court enters a judgment sustaining the city’s order; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Tonka Bay as follows:

1. The house and yard located on the Subject Property, specifically the excessive rubbish accumulation, harborage grounds, missing screens, and chipping paint, are hazardous as defined by Minnesota Statutes, Section 463.15.
2. The house and yard also constitute a public nuisance within the meaning of Minnesota Statutes, Section 609.74 and Sections 1130.02 and 1130.03 of the Tonka Bay City Code.
3. An Abatement Order substantially similar to that attached hereto as Exhibit B shall be served upon all parties with an interest in the Subject Property in order to effectuate this Resolution.
4. The City Attorney is authorized to take all necessary legal steps to secure compliance with the Order and to obtain authority to remove and abate the hazardous conditions on the Subject Property by court order or consent and assess the costs thereof against the Subject Property.

Passed and duly adopted this \_\_\_\_\_ day of September, 2016, by the City Council of the City of Tonka Bay, Minnesota.

\_\_\_\_\_  
Gerry De La Vega, Mayor

ATTEST:

\_\_\_\_\_  
Lindy Crawford, City Administrator-Clerk

## **EXHIBIT A**

### **Legal Descriptions**

All that part of a tract of land designated as Manitou Park in Slocum's Rearrangement Of Manitou Forest, including vacated street lying immediately to the West of said Manitou Park and between extensions across it of the Northerly line of Lake Avenue and the South line of Woodlawn Avenue, lying Southeasterly of the following described line and its Southwesterly and Northeasterly extensions: Commencing at the point of intersection of the Southerly line of Woodlawn Avenue and the Northwesterly extension of that part of the Southwesterly line of Manitou Park, said plat, which is a straight line; thence Southeasterly along said Northwesterly extension and said part of the Southwesterly line a distance of 150 feet to the point of beginning of the line being described; thence deflecting left 90 degrees to the Northeasterly line of said Manitou Park, and there ending.

And

A tract of land designated as Manitou Park in Slocum's Rearrangement Of Manitou Forest, including vacated street lying immediately to the West of said Manitou Park and between extensions across it of the Northerly line of Lake Avenue and the South line of Woodlawn Avenue according to the plat thereof on file or of record in the office of the Register of Deeds in and for said Hennepin County, except that part of Lot 8, Section 28, Township 117, North Range 23, West of the 5th Principal Meridian, corresponding to that part of vacated street lying between Manitou Park and Lots 7 to 14, inclusive, plat of Slocum's Rearrangement of Manitou Forest (vacated), described as follows: Commencing at the point of intersection of the Southerly line of Woodlawn Avenue and a Northwesterly extension of that part of the Southwesterly line of Manitou Park, said plat, which is a straight line; thence Southeasterly along said last mentioned line and an extension thereof, a distance of 150 feet; thence Southwesterly at right angles a distance of 50 feet to the Southwesterly line of said vacated street; thence Northwesterly along the Southwesterly line of said vacated street to the Southerly line of Woodlawn Avenue; thence Easterly along the Southerly line of Woodlawn Avenue to the point of beginning and except that part of the Southwesterly 20 feet of a tract of land designated as Manitou Park, including that part of the vacated street immediately to the West of said Manitou Park and between extensions across it of the Southerly line of Woodlawn Avenue and the Southwesterly line of said Manitou Park, lying Northwesterly of a line drawn at right angles from the Southwesterly line of said tract from a point distant 150 feet Southeasterly, along said Southwesterly line and its extension from the Northwesterly corner thereof, Slocum's Rearrangement of Manitou Forest.

and except that part of said above-described property lying Southeasterly of the following-described line and its Southwesterly and Northeasterly extensions: Commencing at the point of intersection of the Southerly line of Woodlawn Avenue and the Northwesterly extension of that part of the Southwesterly line of Manitou Park, said plat, which is a straight line; thence Southeasterly along said Northwesterly extension and said part of the Southwesterly line of a distance of 150 feet to the point of beginning of the line being described; thence deflecting left 90 degrees to the Northeasterly line of said Manitou Park, and there ending.

**EXHIBIT B**

**Abatement Order**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

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In the Matter of the Hazardous  
Building Located at 35 Woodlawn Avenue,  
Tonka Bay, Minnesota

**ORDER FOR ABATEMENT OF  
A HAZARDOUS BUILDING**

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TO: All owners, occupants, and all lienholders of record.

The City Council of the City of Tonka Bay orders that within 20 days of service of this Order that you abate the hazardous conditions which exist on the property located at: 35 Woodlawn Avenue, in the City of Tonka Bay, which property is legally described on Exhibit A attached hereto.

The City of Tonka Bay, pursuant to Minnesota Statutes Sections 463.15 to 463.261, finds that the building located at the above-referenced property, specifically the peeling paint, excessive use of extension cords, lack of smoke alarms or carbon monoxide detectors, inadequate or unusable indoor plumbing, use of a portable toilet apparatus, lack of egress to all doors and windows, and excessive accumulation of rubbish preventing safe egress and ingress to and from the structure as well as increasing the fire hazard potential and potential harm to emergency responders constitutes a hazardous building within the meaning of Minnesota Statutes Section 463.15, subdivision 3.

The City of Tonka Bay, pursuant to Minnesota Statutes Sections 145A.05, subdivision 9, 561.01 and 609.74 and based on the authorization of Section 1130.04 of the City Code, finds that

the property located at the above-referenced address constitutes a “public nuisance” within the meaning of Minnesota Statutes Section 609.74 and Sections 1130.02 and 1130.03 of the City Code.

Pursuant to the above-referenced statutes and ordinance, it is hereby ORDERED that you abate the hazardous property conditions within 20 days of the date of service of this Order by either removing the building or repairing the property by completing the following:

1. Remove all excess junk, rubbish, and unnecessary articles from inside and outside the dwelling;
2. Ensure safe egress to all doors and windows;
3. Remove and properly dispose of all decaying animal and vegetative matter;
4. Ensure all indoor plumbing is in safe and operable condition;
5. Remove all insect and animal harborage or breeding grounds, including areas on the Property which are susceptible to cause standing water, including all non-registered vehicles which serve to harbor vermin;
6. Install screens on all windows to prevent vermin or insect infestation;
7. Remove all extension cords which are not in compliance with applicable electrical or fire codes;
8. Ensure street address marker is visible from the road to assist emergency service personnel responding to an emergency situation;
9. Install operable smoke and carbon monoxide alarms in all required spaces of the Property as required by the Minnesota State Fire Code;
10. Ensure proper clearance surrounding all appliances to eliminate fire risk posed by excessive rubbish accumulation; and

11. Ensure that the fireplace is inspected and cleaned by a licensed professional prior to its operation.
12. Remove the portable toilet apparatus and all associated human waste from the Property. Ensure that no human waste or raw sewage is allowed to seep into the ground as a result of the apparatus being used on the Property.

You must apply for and obtain the appropriate permit(s) for the work you intend to perform from the appropriate City offices before abating the hazardous conditions. This Order is not a permit. Further, all work completed is subject to inspection by the City's building inspector, Fire inspector, and other staff as required to ensure compliance with applicable rules and law.

You are further advised that unless such corrective action is taken or an Answer is served on the City and filed with the Hennepin County District Court Administrator within 20 days of the date of service of this Order upon you, a motion for summary enforcement of this Order will be made to the Hennepin County District Court.

You are further advised that if you do not comply with this Order and the City is compelled to take any corrective action, all necessary costs incurred by the City in taking the corrective action will be assessed against the property pursuant to Minnesota Statutes Section 463.21. In connection thereto, the City intends to recover all its expenses incurred in carrying out this Order, including specifically but not exclusively, filing fees, service fees, publication fees, attorneys' fees, appraisers' fees, witness fees, including expert witness fees and traveling expenses incurred by the City from the time this Order was originally made pursuant to Minnesota Statutes Section 463.22.

Dated September 14<sup>th</sup>, 2016.

**KENNEDY & GRAVEN, CHARTERED**

By: \_\_\_\_\_

Andrew M. Biggerstaff (#393551)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

**ATTORNEY FOR THE  
CITY OF TONKA BAY**

## **EXHIBIT A TO ABATEMENT ORDER**

### **Legal Descriptions**

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And

A tract of land designated as Manitou Park in Slocum's Rearrangement Of Manitou Forest, including vacated street lying immediately to the West of said Manitou Park and between extensions across it of the Northerly line of Lake Avenue and the South line of Woodlawn Avenue according to the plat thereof on file or of record in the office of the Register of Deeds in and for said Hennepin County, except that part of Lot 8, Section 28, Township 117, North Range 23, West of the 5th Principal Meridian, corresponding to that part of vacated street lying between Manitou Park and Lots 7 to 14, inclusive, plat of Slocum's Rearrangement of Manitou Forest (vacated), described as follows: Commencing at the point of intersection of the Southerly line of Woodlawn Avenue and a Northwesterly extension of that part of the Southwesterly line of Manitou Park, said plat, which is a straight line; thence Southeasterly along said last mentioned line and an extension thereof, a distance of 150 feet; thence Southwesterly at right angles a distance of 50 feet to the Southwesterly line of said vacated street; thence Northwesterly along the Southwesterly line of said vacated street to the Southerly line of Woodlawn Avenue; thence Easterly along the Southerly line of Woodlawn Avenue to the point of beginning and except that part of the Southwesterly 20 feet of a tract of land designated as Manitou Park, including that part of the vacated street immediately to the West of said Manitou Park and between extensions across it of the Southerly line of Woodlawn Avenue and the Southwesterly line of said Manitou Park, lying Northwesterly of a line drawn at right angles from the Southwesterly line of said tract from a point distant 150 feet Southeasterly, along said Southwesterly line and its extension from the Northwesterly corner thereof, Slocum's Rearrangement of Manitou Forest.

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