



CITY COUNCIL WORK SESSION AGENDA

October 10, 2023 – 6:00 pm

1. CALL TO ORDER
2. 6:00 – VACANT PROPERTY CONDEMNATION PROCESS DISCUSSION
3. 6:30 – TREE ORDINANCE DISCUSSION
4. 6:50 – MISCELLANEOUS
5. 6:55 – ADJOURNMENT

Note: Agenda times are approximate



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MEMORANDUM

DATE: October 10, 2023

TO: Tonka Bay City Council
Dan Tolsma, City Administrator

FROM: Jason M. Hill, City Attorney

RE: Hazardous Building Declarations and Abatement

The purpose of this memorandum is to provide a general outline of the process for a city to declare a building hazardous under Minnesota Statutes, section 463.15 through 463.261 and the abatement process, as well as additional alternatives. Please note that this is not meant to include every possible outcome for these matters as every situation has its' own unique circumstances.

Alternative Abatement Processes

The following processes are available to the City for hazardous and abandoned properties:

A. Hazardous Building/Conditions Abatement

Before diving too deeply into the process, a summary of the hazardous building process is as follows:

- Communicate with the property owner to get abatement or consent to remove/raze by the City.
- Declare the building/property hazardous.
- Communicate with the property owner to enter into a removal or abatement agreement.
- Issue a resolution/order for abatement of the hazardous property.
- Obtain default judgment or litigate the matter and enforce a judgment against the property.

A "hazardous building or hazardous property" is 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.** Minnesota Statutes, section 463.15, subd. 3. Under the statutes, the City would have a few options and would need to proceed as follows:

- A building official should provide a report as to the condition of the property and a conclusion that the property is hazardous, as it is defined in the statute. This is most frequently used for abandoned/vacant properties that have not been maintained for many years. It also frequently occurs with buildings damaged by fire.
- A hazardous building/property determination can be made from the right-of-way with photographs of the structure and the condition of the property. However, if it is believed that there are code violations or hazardous conditions on the interior of the structure, the City can (1) obtain the property owner's consent to search the interior of the structure, or (2) obtain an administrative search warrant. Administrative search warrants allow City staff and law enforcement to go onto the property for the purpose of inspecting the interior of the structure or other areas that may be obscured from view at the right-of-way. The application for a search warrant would be submitted to the County signing judge and would include the following information:
 - The property's background and current condition and history of communications with the property owner.
 - Suspected code violations and the justification for the need to inspect the entire property, including the interior of the structure.
 - The scope of the search, including authorization to use reasonable force, if necessary, to enter the property or buildings.
- As with most situations, assuming the City has already made efforts to communicate with the property owner, the first communication should come from my office to request abatement, repair or removal based on the finding of a hazardous building. The property owner can consent to the removal or razing of a structure by the City. Minnesota Statutes, section 463.151. The costs for the removal or razing would be a lien against the property or could be assessed with a payment period of no more than five annual installments with interest at 8% per annum.
- At this stage, cities very frequently enter into a removal or abatement agreement with the property owner, assuming they are willing to work with the city. The agreement would provide a deadline for repair/removal, and if that deadline isn't met, the City would have the option to repair or raze the structure and assess the costs against the property.
- If there is no abatement and no agreement, the City Council would adopt a resolution declaring the property a hazardous building and ordering abatement or removal. The order must recite the background and grounds for the declaration, specify the necessary repairs, provide a reasonable time for compliance and state that if the property owner does not comply, the matter will be submitted to District Court.
- Assuming there is no compliance, the order must be served upon the owner of record, or the owner's agent if an agent is in charge of the building or property, and upon the occupying tenant, if there is one, and upon all lienholders of record, in the same manner as a civil action. If the owner cannot be found, the order must be served upon the owner by posting it at the main entrance to the building or, if there is no building, in a conspicuous

place on the property, and by four weeks' publication in the official newspaper of the City. At the time of filing, a notice of lis pendens must also be recorded against the property.

- At that point, the matter turns into civil litigation. The property has 20 days to respond, and if they fail to respond, which frequently happens, the matter proceeds to a default judgment, which allows the City to obtain judgment to abate the property and assess costs. If the property owner contests the hazardous building declaration, the matter is then litigated in the same fashion as other civil litigation, and the City would have to prove that the building is hazardous.
- If the City obtains a judgment, there are a number of rules and processes that must be followed to ensure personal property is protected and to ensure that the City is able to assess its costs. Most importantly, the City must keep an accurate accounting of the expenses incurred in carrying out the abatement order and of all other expenses incurred in connection with its enforcement, including filing fees, service fees, publication fees, attorney's fees, appraisers' fees, witness fees, including expert witness fees, and traveling expenses incurred by the City **from the time the order was originally made**. The City cannot recover costs and expenses incurred prior to the issuance of the abatement order.

B. Condemnation/Eminent Domain

Minnesota Statutes, section 463.152 allows cities to obtain buildings and real estate that is vacant and hazardous through eminent domain. In order to acquire hazardous buildings under eminent domain laws, the City must have a public purpose to remove the building. This public purpose can be the removal of a public nuisance. In order to perform a condemnation, the City must follow the process outlined in Minnesota Statutes, Chapter 117:

- For an acquisition greater than \$25,000, the City must perform an appraisal of the property before commencing eminent domain procedures. The owner may also obtain an appraisal, at cost to the City.
- The City must make a good faith attempt to negotiate with the owner of the property in order to obtain the property via direct purchase and avoid the eminent domain process.
- The City must request a hearing in District Court on the taking as detailed in Minnesota Statutes, section 117.055.
- Prior to the hearing, the City must send each owner of the property, via certified mail, notice of the public hearing, post notice of the hearing on their website, and publish notice of the hearing in the City newspaper. Notice must be given at least 30, but not more than 60, days before the hearing.
- The City must adopt a resolution authorizing the use of eminent domain that identifies the costs and benefits that will result from the acquisition of the property and addresses how the acquisition of the property serves a public purpose.

- The City must submit a petition to the District Court describing the land and the purpose for the taking and giving the names of all owners of the property. The petition must be served to the owner at least 20 days before the hearing.
- If the owner is not a resident of Minnesota, or if their address cannot be obtained, the City Attorney may file an affidavit with the court informing them of the situation and requesting to notice the hearing by publishing notice of the same for three weeks.
- The City must record notice of pendency of the proceedings with either the registrar of titles or the County recorder, depending on whether the lands are registered.
- At the hearing, the City must show by a preponderance of the evidence that the property is a hazardous property or a nuisance, and that the taking is necessary to abate the nuisance.
- If the court finds that the taking is necessary, they will assign a Commissioner and two alternates to assess the damages sustained by the owner in the taking via meetings with interested parties.
- The Commissioner will file a report within 90 days of their appointment informing the parties of their decision as to damages.
- The City and owner will have 40 days from the issuance of the report to appeal the Commissioner's decision.
- The City will pay the owner the designated damages within 70 days of the commissioner report, or within 45 of a judgement of appeal or a settlement. The City will pay any owed taxes or special assessments on the property.

JMH