INFORMATION MEMO

Dangerous Properties

Learn about the tools available to cities under state law to remedy unhealthy and dangerous properties such as those damaged by fire or explosion, unsecured vacant buildings, garbage houses, and otherwise hazardous buildings or excavations. Contains several model resolutions for action and a link to a model ordinance.

RELEVANT LINKS:

LMC information memo, *Public Nuisances*.

I. Types of Dangerous Properties

Cities sometimes need to deal with properties that are dangerous because of conditions that are hazardous or pose health risks. The city's response to these properties depends on the severity of the problem. On one end of the spectrum, a nuisance ordinance may be effective in dealing with problems like junk vehicles or tall grass. At the other end of the spectrum, the statutory hazardous building process may be the appropriate tool to raze or tear down a hazardous building. The city will need to evaluate the different options and determine which tool best fits the needs of the particular situation.

This memo will cover the following dangerous property situations and the tools available under state law that may help to remedy them:

- Hazardous excavations.
- Buildings damaged by fire or explosion.
- Unsecured vacant buildings.
- Garbage houses.
- Hazardous buildings.

This memo is an overview of how to deal with the situations mentioned above. It is intended as a way to start looking at the city's options, as well as a reference for when the city moves forward with a selected option. Often, the laws are quite detailed or technical, so it is imperative to work with the city attorney. The city attorney will be able to provide specific legal advice in a particular situation. In some situations, like the hazardous building process, the city will need to use its city attorney in the related court proceedings. This memo is intended only as general information and should not replace the specific legal advice of the city attorney.

RELEVANT LINKS:

II. Lawfully entering private property

The procedures covered in this memo involve private property. Private property rights are afforded constitutional protections, so it is important that the city take appropriate steps to ensure these rights are respected. Whenever this memo mentions entering private property for an inspection, repair work, or other purpose, the principles outlined in this section will apply.

U.S. Const. 4th amendment. *Camara v. Municipal Court*, 387 U.S. 523, 280 Minn. 390 (1967).

Generally, in order to lawfully enter private property to inspect or correct a situation, the city must either obtain voluntary consent from the owner or an administrative search warrant. This is because the Fourth and Fourteenth Amendments to the U.S. Constitution prohibit unreasonable searches and seizures of persons or property. The United States Supreme Court has held that these Fourth Amendment guarantees apply to city inspections. If a city unlawfully enters private property, it may be a violation of these constitutional rights.

In many circumstances, seeking consent is the simplest way to gain access to property. If the city has consent to enter the property, it may do so. Consent must be voluntarily given by a person who has the authority to consent, such as the owner or occupant of the property. It is important that the person giving consent is aware of the purpose and scope of the inspection before consenting. It is preferable to obtain the consent in writing.

LMC information memo, *Administrative Search Warrants*.

If the city does not or cannot obtain the owner's consent to enter the property, another way to enter the property is to obtain an administrative search warrant. An administrative search warrant is issued by a judge and allows designated people to enter the property for certain purposes specified in the warrant. An administrative search warrant removes the need for consent.

Camara v. Municipal Court, 387 U.S. 523 (1967).

In order to obtain an administrative search warrant, the city must show the judge there is "probable cause" as to why its request to enter private property is justified. The application for a warrant must describe the city's inspection program and establish how the particular requested inspection falls within the scope of the ordinance.

After an administrative search warrant is issued, it is important for the city to provide notice to the property owner or occupant. The notice should identify the nature and scope of the inspection or work, the date, and the time it will be performed. If the city must return to the property to continue work or to follow up on an inspection or code violation, it is also important to notify the property owner or occupant of the date and time the city will return.

RELEVANT LINKS:

It may be possible to lawfully enter private property without consent or a warrant, such as when an emergency exists. The city attorney will be able to provide specific legal advice on whether a warrant or consent is necessary.

III. Due process

U.S. Const., amendments V, XIV. Minn. Const., art.1. Minn. Const., art. 1, § 7. *Village of Zumbrota v. Johnson*, 280 Minn. 390, 161 N.W.2d 626 (1968). *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976).

Due process is also something the city should consider when using any of the procedures discussed in this memo. Both the federal and state constitutions provide that no person may be deprived of life, liberty, or property without due process of law. The two basic concepts of due process are: 1) notice to interested parties, such as the property owner and tenants, and 2) an opportunity to be heard by a person or group who has the authority to make a decision on the matter. The opportunity to be heard must be at a meaningful time and in a meaningful manner. Unless there is an emergency situation, notice and an opportunity to be heard should be provided without restraint, because a decision that is adverse to the property owner or tenant results in a loss of property without compensation.

Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893 (1976).

Due process is not a fixed standard, but rather is flexible and should be tailored to the particular situation. Some statutes provide particular notice and hearing requirements that help to clarify what due process is required under particular statutes. If there are no statutory notice or hearing requirements, or the requirements provided are minimal, that does not mean that due process does not apply. Rather, that means that the city, with the help of the city attorney, should determine if due process applies and, if so, how the city will satisfy these requirements.

City of Golden Valley v. Wiebesick, No. A15-1795, 2017 WL 3045553 (Minn. July 19, 2017).

Administrative search warrant procedures must include notice to tenants, not just to property owners. This notice must include an opportunity to be heard in court. If the city, applying for the warrant does not disclose it, "the district court may also inquire into the extent of police presence, if any, planned for the inspection and the appropriateness of that presence. Typically, absent a threat of danger, the police will not be participating in the inspection within the premises."

In some instances in this memo, the discussion of the law does not prescribe due process requirements, but it seems that the principles of due process should apply. At these points, the memo makes suggestions on how to satisfy due process. Keep in mind that these are only suggestions and the city should work with the city attorney to determine the best way to handle due process requirements in a particular situation.

RELEVANT LINKS:

Minn. Stat. § 463.25.

IV. Hazardous excavations

State law provides a specific process to deal with hazardous excavations. A hazardous excavation exists in the following situations:

- An excavation for building purposes is left open for more than six months without proceeding with the erection of a building thereon, whether or not completed.
- Any excavation or basement is not filled to grade or otherwise protected after a building is destroyed, demolished, or removed.

The statute does not give direction to the council on how to determine if a particular excavation meets the statutory definition. An inspection of an excavation may provide relevant information. It is a good idea to take notes and photographs of what is observed at the inspection. The city should consider how it will lawfully enter the property to make the inspection.

See Section II - *Entering private property*.

While the council is considering whether the excavation is hazardous, it may be helpful to consider any reports, photos, or other information related to the property. It is a good idea for the council to document its decision and the reasons that support that decision. In the case of a court challenge, the documented decisions and supporting reasons may help the city defend its determination.

Although the law does not strictly require the property owner to be notified that the issue of filling or protecting a hazardous excavation will be discussed at a meeting, it is a good idea to notify the property owner that the issue will be discussed and to allow him or her a chance to speak on the issue. By doing so, there will be a stronger argument that the property owner's due process rights have been respected.

See Section III - *Due process.*

Minn. Stat. § 463.25.
Minn. Stat. § 463.17.

Ordering a Hazardous Excavation to be Filled, Protected, or Built Upon, LMC Model Resolution.

If the council determines that the excavation is hazardous, the council may order that the excavation be filled or protected, or that the erection of the building begin forthwith if the excavation is for building purposes. The order is generally done by resolution. While the law does not specify what should be included in the order, it should likely be in writing and should, at a minimum:

- Include the grounds or basis for the order.
- Specify the necessary work to be done.
- State that if the land owner does not comply with the order within 15 days after notice is served, the council will have the work done.
- State the city will specially assess any costs incurred by the city doing the work against the property.

RELEVANT LINKS:

Minn. Stat. § 463.25.
Minn. Stat. § 463.17, subd. 2.

LMC information memo, *Newspaper Publication*.

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, any occupying tenant, and all lien-holders of record. Service is completed in the same manner as a service of summons in a civil action. If the owner cannot be found, the order must be served by posting it at the main entrance to the building or, if there is no building, in a conspicuous place on the property. In addition to posting, the order must be published for four weeks in the official newspaper of the municipality; if there is no official city newspaper, then the order is published in a legal newspaper in the county.

Minn. Stat. § 463.25.
See Section II - *Entering private property*.
Minn. Stat. § 471.345.

If the owner of the land does not comply with the order within 15 days after it is served, the council must have the excavation filled to grade or protected. If the city needs to do the work, the city needs 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 may need to hire someone. Depending on the work to be done, the competitive bidding laws may apply.

Minn. Stat. § 463.25.
Minn. Stat. § 463.21.
Minn. Stat. § 463.161.
Minn. Stat. §§ 429.061-429.081.
LMC information memo, *Special Assessment Toolkit*.

The costs incurred by the city may be charged against the property 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. It is a good idea to keep an accurate record of the incurred costs so the city can accurately assess them. An alternative to using a special assessment is to recover the costs by obtaining a court judgment against the property owner.

V. Buildings damaged by fire or explosion

Abandoned, Hazardous or Fire Damaged Buildings Information Sheet, Minnesota State Fire Marshal (2016).

Sometimes, there is a fire or explosion in a city that damages a building. If the owner does not make the necessary repairs to the property, the responsibility sometimes may fall to the city. If the building was insured, it may be an option for the city to receive a portion of the insurance settlements from the damage if the city has established an escrow or trust account for this purpose.

A. Establishing the account

Minn. Stat. § 65A.50, subds. 12, 14.

In order to obtain a portion of the insurance settlements from fire or explosion damage, the city must first establish an escrow or trust account. It is important to note that the city cannot obtain insurance settlement proceeds for losses that happened before the effective date of the account.

Minn. Stat. § 65A.50, subds. 12, 14.

Establishing a Fire Escrow Account, LMC Model Resolution.

The escrow or trust account is established by passing a resolution. The next step is to notify the commissioner of commerce, in writing, that the city has established a trust or escrow account and intends to uniformly apply this section with respect to all property located within the city.

RELEVANT LINKS:

The city should also request to be added to the list of cities that maintain these accounts.

Minn. Stat. § 65A.50, subds. 12, 14.
Department of Commerce List of "*Insurance Escrow by Municipalities for Debris Removal.*"

The commissioner keeps a list of all cities with this type of account. When the commissioner receives notice that a city has established an account, the commissioner will add the city to the list. Then, the commissioner will distribute the list to all insurance companies transacting property insurance in this state, indicating the addition of the new city. The addition of the city to the list is effective on the date specified by the commissioner in the amendment.

The commissioner must notify the city and insurance companies of the effective date of the addition, which cannot be less than 30 days after the receipt of notice by the insurance company.

Minn. Stat. § 65A.50, subd. 13(b).

Once on the list, cities must make a written report to the commissioner on the extent of the city's use of the escrow account. The report must also include the effect of the use of the law on arson fires in the city. The report must be filed with the commissioner no later than 90 days after the two-year anniversary of the city's placement on the list and, thereafter, no later than 90 days after each subsequent two-year period.

See Section V-B *Discontinuing the account.*

If the commissioner does not receive the written report, the commissioner will provide a written reminder notice. If the commissioner does not receive the report within 30 days after providing the written reminder, the city will be treated as having made a written request to be deleted.

B. Discontinuing the account

Minn. Stat. § 65A.50, subds. 13, 15.

If the city no longer wishes to have the escrow or trust account and wants to be removed from the commissioner's list, the city must notify the commissioner in writing that it wants to be deleted from the list. The city may stop operating the escrow or trust account for more than six months after notifying the commissioner. The city must give 30 days written notice before it stops using the account. After the commissioner receives the city's written request, the commissioner shall prepare and distribute an amendment to the list, indicating the deletion. The deletion shall be effective on the date specified by the commissioner in the amendment. The commissioner must then notify the city and insurance companies of the effective date of the deletion, which must be not less than 30 days after the insurance companies receive notice. A city must continue to use its escrow or trust account for any loss which occurs before the effective date of the deletion.

RELEVANT LINKS:

C. Funding and using the account

Minn. Stat. § 65A.50, subd. 2.

Once the city has set up the account, it cannot use it unless there is an insured building in the city that has been damaged by fire or explosion. Even then, the account is only used after the statutory process is followed.

1. Funding the account

Minn. Stat. § 65A.50, subd. 2.

When a property owner files a claim for a loss to his or her insured real property due to fire or explosion and a final settlement is reached on the loss, the insurer must withhold from payment of the settlement the lesser of 25 percent of the actual cash value of the insured's real property at the time of the loss or 25 percent of the final settlement. (The property owner with insurance is known as "the insured").

For purposes of this law, a final settlement is the determination of the amount owed to the insured by any of the following means:

- Acceptance of a proof of loss by the insurer.
- Execution of a release by the insured.
- Acceptance of an arbitration award by both the insured and the insurer.
- A court judgment.

Minn. Stat. § 65A.50, subds. 9, 11.

The final settlement amount cannot include the payment of policy proceeds for personal property or contents damage, or for additional coverage not contained in the fire coverage portion of the fire insurance policy. Further, this process applies only to final settlements that exceed 49 percent of the insurance on the insured real property.

Minn. Stat. § 65A.50, subd. 16.

The requirement to withhold portions of the insurance settlement proceeds does not apply if all of the following conditions occur:

- Within 30 days after agreement on a final settlement between the insured and the insurer, the insured has filed with the insurer evidence of a contract to repair.
- The insured consents to the payment of funds directly to the contractor performing the repair services.
- Upon receipt of the contract to repair, the insurer gives notice to the municipality in which the property is situated that there will not be a withholding under this section because of the repair contract.

Minn. Stat. § 65A.50, subd. 16.

Funds released under these circumstances may be forwarded only to a contractor performing the repair services on the insured property.

Minn. Stat. § 65A.50, subd. 17.

If the insured and the insurer have agreed on the demolition costs or the debris removal costs as part of the final settlement of the real property insured claim, the insurer shall withhold the largest of the following sums:

RELEVANT LINKS:

- The agreed cost of demolition or debris removal.
- Twenty-five percent of the actual cash value of the insured real property at the time of loss.
- Twenty-five percent of the final settlement of the insured real property claim.

Minn. Stat. § 65A.50, subd. 2.

At the time funds are withheld, the insurer must give notice of the withholding to the treasurer of the city where the property is located, the insured, and any bank or lender that has a lien on the property and that is named on the insurance policy. If the settlement resulted from a court judgment, notice must also be provided to the court where the judgment was entered. The notice must include:

- The identity and address of the insurer.
- The name and address of each policyholder, including any bank or lender that holds a mortgage on the property.
- The location of the insured real property.
- The date of loss, policy number, and claim number.
- The amount of money withheld.
- A statement that the city may have the withheld amount paid into a trust or escrow account established for the purposes of this section if it shows cause within 30 days that the money should be withheld to protect the public health and safety; otherwise, the withheld amount shall be paid to the insured at the expiration of 30 days.

Minn. Stat. § 65A.50, subd. 16.

- An explanation of the provisions of this section and a verbatim reproduction of the statutory subdivision regarding exceptions to withholding.

Minn. Stat. § 65A.50, subd. 3.

In order for the city to put the withheld funds into its escrow or trust account and retain the funds, the chief fire official or other authorized city representative must prepare an affidavit that says that the insured's damaged structure violates specified health and safety standards, and this requires the escrow of the withheld amount as surety for the repair, replacement, or removal of the damaged structure. This affidavit constitutes cause for escrowing the withheld amount.

Minn. Stat. § 65A.50, subd. 3.

Where there is a settlement on the insurance claim, the affidavit must be sent to the insurer, the insured, and any banks or lenders who hold a mortgage on the property. Once the insurer receives the affidavit, the insurer must forward the withheld amount to the city treasurer. The insurer must also provide notice of the forwarding of funds to the insured and any bank or lender that holds a mortgage on the property. If there was a court judgment on the insurance claim, the affidavit and notice of forwarding the funds must also be given to the court that entered the judgment.

RELEVANT LINKS:

Minn. Stat. § 65A.50, subd. 4.

Minn. Stat. § 65A.50, subd. 5.

When the city receives the withheld funds from the insurance company, the city treasurer must record the information and the date the money was received. The treasurer must immediately deposit the money into the established trust or escrow account. Money deposited into the account must not be commingled with city funds. The account may be interest-bearing. Any interest earned on money placed in a trust or escrow account shall be retained by the municipality to defray expenses incurred under this section.

2. Releasing funds from the account

Once the money is in the city trust or escrow account, there are several situations that trigger releasing those funds.

a. Releasing funds to bank or lender

Minn. Stat. § 65A.50, subd. 4.

If the mortgage on the insured property is in default, the bank or lender who holds that mortgage may make a written request to the city for the funds.

Not later than 10 days after receiving the written request, the treasurer must release any or all of the proceeds to the extent necessary to satisfy the outstanding mortgage.

b. Releasing funds to the insured

Minn. Stat. § 65A.50, subd. 6.

There are two situations described in statute where the funds in the account must be immediately forwarded to the insured. The first situation is where the chief fire official or other authorized city representative receives or is shown reasonable proof that the damaged or destroyed portions of the insured structure have been repaired or replaced. However, if not all repairs or replacement have been made, the city may withhold the amount that is needed to complete repair or replacement.

Minn. Stat. § 65A.50, subd. 6.

The second situation is when the chief fire official or other authorized city representative receives or is shown reasonable proof that the damaged or destroyed structure and any and all remnants of the structure have been removed from the land where the structure was located. This may be done by the owner or any other person. The work must have been done in compliance with local code requirements.

Minn. Stat. § 65A.50, subd. 6.

There is also a third situation when funds must be immediately released, but in this situation, the funds are forwarded to a third-party contractor and not the insured.

RELEVANT LINKS:

In this situation, the funds deposited into the escrow or trust account must be immediately forwarded to the contractor when the chief fire official or other authorized city representative receives or is shown reasonable proof that the insured has entered into a contract to perform repair, replacement, or removal services on the property. It must also be shown that the insured consents to payment of the funds directly to the contractor performing the services. These funds may be forwarded only to a contractor performing services on the insured property.

Minn. Stat. § 65A.50, subd. 7.

As mentioned in the three situations above, the insured must show reasonable proof in order to have the funds released or forwarded. The law provides three situations that will be considered reasonable proof:

- Originals or copies of pertinent contracts, invoices, receipts, and other similar papers showing both the work performed or to be performed and the materials used or to be used by all contractors performing repair, replacement, or removal services with respect to the insured real property.
- An affidavit executed by the contractor who has performed the greatest amount of repair or replacement work on the structure, or who has done most of the clearing and removal work if structure repair or replacement is not to be performed. The contractor shall attach to the affidavit all pertinent contracts, invoices, and receipts and shall swear that these attached papers correctly indicate the nature and extent of the work performed to date by the contractor and the materials used.
- An inspection of the insured real property to verify that repair, replacement, or clearing has been completed.

3. Use of retained proceeds

Minn. Stat. § 65A.50, subd. 8.

If reasonable proof is not received or shown to the chief fire official or other authorized city representative within 45 days after the funds were received by the treasurer, the city must use the funds to secure, repair, or demolish the damaged or destroyed structure and clear the property in question, so that the structure and property are in compliance with local code requirements and applicable ordinances of the municipality. Any unused portion of the retained funds must be returned to the insured.

Minn. Stat. § 65A.50, subd. 8. See Minn. Stat. ch. 299F. Minn. Stat. ch. 463. See Section IX, *Hazardous buildings.*

It may be possible that during these 45 days, the city may have secured, repaired, or demolished the damaged or destroyed structure under another law or ordinance such as the hazardous building laws. If this is the case, after the 45 days lapse, the city may release any special assessment placed on the property and reimburse itself from the retained funds.

Minn. Stat. § 65A.50, subd. 8.

No more than 15 percent of the funds used by the municipality may be attributed to the city's administrative expenses. Any administrative expenses must be directly related to the actions authorized by the statute.

RELEVANT LINKS:

VI. Securing vacant buildings

Minn. Stat. § 463.251.

A vacant or unoccupied building may be hazardous because it is open to trespass and has not been secured. If the building could be made safe by being secured, the council may order that the building be secured. "Secure" is defined to include installing locks, repairing windows and doors, boarding windows and doors, posting "no-trespassing" signs, installing exterior lighting or motion-detecting lights, fencing the property, and installing a monitored alarm or other security system. This is not an exhaustive list, so the city may take other appropriate actions to secure a building.

State statutes do not give direction to cities on how to determine if a building is hazardous due to it being open to trespass. Council determination on whether a building is vacant or unoccupied and open to trespass should be based on city inspections, notes, photos, or other information related to the property.

See Section II, *Entering private property*.

The city should also consider how to lawfully enter the property for inspection purposes.

LMC information memo, *Sanitary Sewer Toolkit*.

It is a good idea for the council to document its decision and the reasons that support that decision. In the case of a court challenge, the documented decisions and supporting reasons may help the city defend its determination.

See Section III, *Due process*.

Although the law does not strictly require the property owner to be notified that the issue of securing the building will be discussed at a meeting, it is a good idea to notify the property owner that the issue will be discussed and to allow him or her a chance to speak on the issue.

By doing so, there will be a stronger argument that the property owner's due process rights have been respected. Also, notice to the property owner of the problem may lead to self-remedy before an order is necessary.

Minn. Stat. § 463.251, subd. 2.
Ordering the Securing of a Vacant Building, LMC Model Resolution.

If the council determines the building is hazardous and should be secured, the council adopts an order by resolution. The council must serve notice of the order to the owner of record (or the owner's agent), the taxpayer identified in the property tax records for that parcel, the holder of the mortgage or sheriff's certificate, and any neighborhood association for the neighborhood where the building is located that has requested notice. The notice of the order is served by delivering or mailing a copy to these people at their last known address.

Minn. Stat. § 463.251, subd. 2.

The notice of the order should be in writing and must include a statement that:

RELEVANT LINKS:

- Informs the owner and the holder of any mortgage or sheriff's certificate of the requirements that the owner or holder of the certificate has 6 days to comply with the order or provide the council with a reasonable plan and schedule to comply with the order and that costs may be assessed against the property if the person does not secure the building.
- Informs the owner and the holder of any mortgage or sheriff's certificate that, within 6 days of the order being served, the person may request a hearing before the governing body challenging the governing body's determination that the property is vacant or unoccupied and hazardous.
- Notifies the holder of any sheriff's certificate of the holder's duty under section 582.031, subdivision 1, paragraph (b), to enter the premises to protect the premises from waste and trespass if the order is not challenged or set aside and there is prima facie evidence of abandonment of the property as described by law.

Minn. Stat. § 582.031, subd. 1(b). Minn. Stat. § 582.032, subd. 7.

While the law does not require it, it is a good idea to include the grounds or basis for ordering the building to be secured. It may also be a good idea to specify what actions need to be taken to secure the building.

Minn. Stat. § 463.251, subd. 3.

The owner or a holder of a sheriff's certificate of sale may then comply with the order, provide the council with a reasonable plan and schedule to comply with the order, or request a hearing on the order. If the owner does not take one of these actions within 6 days after the order is served, the council must ensure that the building is properly secured.

Minn. Stat. § 471.345.

If the city must secure the 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 that needs to be done, the competitive bidding laws may apply.

Minn. Stat. § 463.251, subd. 3. Minn. Stat. § 463.21. Minn. Stat. § 463.161. Minn. Stat. §§ 429.061-.081. LMC information memo, *Special Assessment Toolkit*.

The costs of securing the building may be charged against the real estate 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. It is a good idea to keep an accurate account of the incurred costs so the city can assess them. An alternative to using a special assessment is to recover the costs by obtaining a court judgment against the property owner.

Minn. Stat. § 463.251, subds. 1, 3. Minn. Stat. § 473.121, subd. 2.

In the metropolitan area, the council may work with neighborhood associations to develop and implement plans to secure vacant buildings in a timely and cost-effective manner. (A neighborhood association is an organization recognized by the city as representing a neighborhood within the city). The city may use rehabilitation and revitalization funds in this scenario.

RELEVANT LINKS:

Minn. Stat. § 463.251, subd. 4.
Securing Vacant Buildings, LMC Model Ordinance

The statutes do not provide a process for emergency securing of a vacant building. However, a city may adopt an ordinance that would allow the city to secure the building in an emergency situation when a vacant building presents an immediate danger to the health and safety of persons in the community.

VII. Tenant remedies action

Minn. Stat. § 504B.395, subds. 1, 2.

Sometimes a landlord does not maintain his or her property in a safe or sanitary manner. When the tenant cannot get the landlord to make necessary repairs or corrections to a residential building, the law gives a process that would allow the city to step in and use the courts to force the landlord to take action. (An action may also be brought by a tenant, a housing-related neighborhood organization, or other unit of government, but this section will focus on cities bringing an action).

It is not mandatory that cities take action, but in some situations it may be desirable for the city to choose to get involved.

Minn. Stat. § 504B.471.

Minn. Stat. § 504B.465.

The purpose of these laws is to provide additional remedies to tenants. The purpose of the laws is not to allow a landlord to "get out of" his or her financial liability for repairs or maintenance of the building. The provisions of these laws cannot be waived by a tenant in a lease or other agreement.

A. Bringing a tenant's remedies action

Minn. Stat. § 504B.395.

The city may bring a tenant's remedies action when there is one or more of the following:

- A violation of any state, county, or city health, safety, housing, building, fire prevention, or housing maintenance code.
- The premises and all common areas are not fit for the intended use.
- The premises are not kept in reasonable repair during the term of the lease (unless the disrepair has been caused by the tenant).
- The landlord allows controlled substances, prostitution or prostitution-related activities, unlawful use or possession of a firearm, or stolen property or property obtained by robbery to be in the building, including the common area and areas near the building.
- A violation of an oral or written rental agreement, lease, or contract.

Minn. Stat. § 504B.161, subd. 1(a)(1).

Minn. Stat. § 504B.161, subd. 1(a)(2).

Minn. Stat. § 504B.171, subd. 1.

Minn. Stat. § 504B.395.

The action is brought in district court in the county where the building is located.

RELEVANT LINKS:

B. Inspection

Minn. Stat. § 504B.395, subd. 3.
Minn. Stat. § 504B.185.
Minn. Stat. § 504B.381.
Minn. Stat. § 504B.385.
Minn. Stat. §§ 504B.395-.451.

A residential tenant or a housing-related neighborhood organization may request an inspection by the city if the city is charged with enforcing the code that is claimed to be violated. The city must perform the inspection. After the inspection, the inspector must inform, in writing, the landlord or the landlord's agent and the person or organization requesting the inspection (if someone other than the city) of any code violations that were discovered. A reasonable period of time must be given to correct the violations. A tenant's remedies action cannot be brought until the time to correct the violations has expired and satisfactory repairs to remove the code violations have not been made. However, an action may be brought if the residential tenant, or neighborhood organization with the written permission of a tenant, alleges the time allowed for repairs is excessive.

Minn. Stat. § 504B.395, subd. 4.

The law requires that a residential tenant or housing-related neighborhood organization must give 14 days' notice to the landlord of certain violations before an action is brought.

The law does not specify that the city must give similar notice so the city should work with the city attorney in determining whether notice should be provided. The notice requirements may be waived if the court finds that the landlord cannot be located despite diligent efforts.

C. Complaint and summons

Minn. Stat. § 504B.395.

If the time for repairs has expired and repairs have not been made, a tenant's remedies action may be started in the court system by serving a complaint and summons. The summons is issued by a judge or court administrator.

The complaint must be verified and must describe the facts that show there is a violation (or violations) in the building. The complaint must state the relief that is sought. If it is known, the complaint must also list the rent due each month from each dwelling unit within the residential building.

If the violation is of any state, county, or city health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building, the complaint must be accompanied by one of the following:

- A copy of the official inspection report by a department of health, housing, or buildings, certified by the custodian of records of that department stating:
  - When and by whom the residential building was inspected.
  - What code violations were recorded.
  - That notice of the code violations has been given to the landlord.

RELEVANT LINKS:

- A statement that a request for inspection was made to the appropriate state, county, or municipal department, that demand was made on the landlord to correct the alleged code violation, and that a reasonable period of time has elapsed since the demand or request was made.

Minn. Stat. § 504B.401.
Minn. Stat. §§ 504B.395-.471.

Upon receiving a complaint, the court administrator must prepare a summons. The summons must specify the time and place of the hearing to be held on the complaint and must also state that if at the time of the hearing, the landlord does not submit and establish a defense, judgment may be entered in favor of the person or organization bringing the complaint.

The hearing must be scheduled not less than seven nor more than 14 days after receipt of the complaint by the court administrator.

The summons and complaint must be served upon the landlord or the landlord's agent not less than seven nor more than 14 days before the hearing. Service shall be by personal service upon the defendant pursuant to the Minnesota Rules of Civil Procedure.

If personal service cannot be made with due diligence, service may be made by affixing a copy of the summons and complaint prominently to the residential building involved, and mailing at the same time, a copy of the summons and complaint by certified mail to the last known address of the landlord.

D. Answer and defenses

Minn. Stat. § 504B.411.

At or before the time of the hearing, the landlord may answer the complaint in writing. Defenses that are not contained in a written answer must be orally pleaded at the hearing before any testimony is taken. No delays in the date of hearing may be granted to allow time to prepare a written answer or reply except with the consent of all parties.

Minn. Stat. § 504B.415.

State law provides three defenses that the defendant may rely on:

- The violation or violations alleged in the complaint do not exist or that they have been removed or remedied.
- The violations have been caused by the willful, malicious, negligent, or irresponsible conduct of a complaining residential tenant or anyone under the tenant's direction or control.
- A residential tenant of the residential building has unreasonably refused entry to the landlord or the landlord's agent to a portion of the property for the purpose of correcting the violation, and that the effort to correct was made in good faith.

RELEVANT LINKS:

E. Trial and judgment

Minn. Stat. § 504B.421.

If issues of fact are raised, there will be a trial without a jury. The court may grant a postponement of the trial on its own motion or at the request of a party if it determines that postponements are necessary to enable a party to obtain necessary witnesses or evidence. A postponement cannot be for more than 10 days unless all appearing parties consent.

Minn. Stat. § 504B.425.

If the court finds that the complaint has been proven, it may, in its discretion, take any of the following actions, either alone or in combination:

- Order the landlord to remedy the violation or violations if the court is satisfied that correction action will be prompt.
- Order the tenant to remedy the violation or violations and deduct the cost from his or her rent subject to terms that the court determines.
- The court may grant any other relief it deems just and proper, including a judgment against the landlord for reasonable attorney fees, not to exceed $500, in the case of a prevailing residential tenant or neighborhood organization. There is no similar limit in the law for cities.
- Appoint an administrator with the powers described by law and direct that rents due be deposited with the administrator and that the administrator uses the rents collected to remedy the violation or violations by paying the debt service, taxes, and insurance, and providing the services necessary to the ordinary operation and maintenance of the residential building, which the landlord is obligated to provide but fails or refuses to provide.

Minn. Stat. § 504B.445.

- Lower rent to reflect the extent to which any uncorrected violations impair the residential tenants' use and enjoyment of the property.
- After termination of administration, the court may continue the jurisdiction over the residential building for a period of one year and order the landlord to maintain the residential building in compliance with all applicable state, county, and city health, safety, housing, building, fire prevention, and housing maintenance codes.

Minn. Stat. § 504B.431.

A copy of the judgment must be personally served on every residential and commercial tenant of the residential building whose obligations will be affected by the judgment. If, with due diligence, personal service cannot be made, service may be made by posting a notice of the judgment on the entrance door of the residential tenant's dwelling or commercial tenant's unit and by mailing a copy of the judgment to the residential tenant or commercial tenant by certified mail.

RELEVANT LINKS:

Minn. Stat. § 504B.435.

If an administrator was appointed by the court, the landlord's right to collect rent is void and unenforceable from the time the court signs the order for judgment until the administration is terminated.

Minn. Stat. § 504B.441. *City View Apartments v. Silvia Lopez Sanchez*, No. C2-00-313 (Minn. Ct. App. Aug. 1, 2000) (unpublished decision).

A residential tenant may not be evicted, have increased lease obligations, or have services decreased if the action is a penalty for the complaint. If there is an eviction or change in obligations or services within 90 days after a complaint made in good faith is filed, the landlord has the burden of proving that it was not in response to the complaint.

F. Administrators

An administrator may be a person, local government unit or agency, other than a landlord of the building, the inspector, the complaining residential tenant, or a person living in the complaining residential tenant's dwelling unit. If a state or court agency is authorized by statute, ordinance, or regulation to provide persons or neighborhood organizations to act as administrators under this section, the court may appoint them to the extent they are available.

Minn. Stat. § 504B.445.

A person or neighborhood organization appointed as administrator must post bond to the extent of the rents expected by the court to be necessary to be collected to correct the violation or violations; there is no similar requirement for a city to post bond.

Administrators appointed from governmental agencies shall not be required to post bond.

The court may allow a reasonable amount from the rent to be spent for the services of administrators and the expense of the administration. When the administration terminates, the court may enter judgment against the landlord in a reasonable amount for the services and expenses incurred by the administrator.

1. The administration

Minn. Stat. § 504B.445.

State law outlines the powers of an administrator. The administrator may:

Minn. Stat. § 504B.381.
Minn. Stat. §§ 504B.395-.471.

- Collect rents from tenants, evict tenants for nonpayment of rent or other cause, enter into leases for vacant dwelling units, rent vacant commercial units with the consent of the landlord, and exercise other powers necessary and appropriate to carry out the purposes of the tenant's remedies laws.

RELEVANT LINKS:

- Contract for the reasonable cost of materials, labor, and services necessary to remedy the violation or violations found by the court and for the rehabilitation of the property to maintain safe and habitable conditions, and disburse money for these purposes from available funds.
- Provide services to the residential tenants that the landlord is obligated to provide but refuses or fails to provide, and pay for them from available funds.
- Petition the court, after notice to the parties, for an order allowing the administrator to encumber the property to secure funds to the extent necessary to cover certain costs and to pay for the costs from funds derived from the encumbrance.
- Petition the court, after notice to the parties, for an order allowing the administrator to receive funds made available by the federal, state, or city government to the extent necessary to cover certain costs and pay for them from funds derived from this source. (The city recovers these disbursements by special assessments on the piece of property in question. The assessment, interest, and any penalties are to be collected as special assessments made for other purposes).

Minn. Stat. § 504B.445.

Minn. Stat. § 334.16, subd. 1(b). Minn. Stat. ch. 429. LMC information memo, *Special Assessment Toolkit*.

When considering whether to grant the administrator funds, the court must consider factors relating to the long-term economic viability of the dwelling, including:

- The causes leading to the appointment of an administrator.
- The repairs necessary to bring the property into code compliance.
- The market value of the property.
- Whether present and future rents will be sufficient to cover the cost of repairs or rehabilitation.

Minn. Stat. § 504B.445.

Before any other expenses may be paid, the administrator must first contact and pay for residential building repairs and services necessary to keep the residential building habitable. If sufficient funds are not available for paying other expenses, such as taxes and mortgage payments, after paying for the necessary repairs, the landlord is responsible for the other expenses.

The administrator may not be held personally liable in the performance of duties under this section except for misfeasance, malfeasance, or nonfeasance of office.

Minn. Stat. § 504B.451.

The Minnesota Housing Finance Agency may establish a revolving loan fund to pay the administrative expenses of receivership administrators for properties for occupancy by low- and moderate-income persons or families. The landlord must repay the payments made from the fund.

RELEVANT LINKS:

2. Ending administration

Minn. Stat. § 504B.445.

There are a few ways to end an administration. One way is for the administrator or any party to petition the court, after notice to all parties, for an order terminating the administration on the grounds that the available funds are insufficient to remedy the violations. This may be done at any time during the administration. If the court finds for the person or entity bringing the petition, the court will terminate the administration and enter a judgment that the residential tenant may reduce rent to the extent that the uncorrected violations impair the resident's use and enjoyment of the property.

Minn. Stat. § 504B.425(e).

Minn. Stat. § 504B.455.

Another option is for the administrator, after notice to all parties, to petition the court to be relieved of duties. The petition must include the reasons for the request. The court may, in its discretion, grant the petition and discharge the administrator after approving the accounts.

A third option is for a party, after notice to the administrator and all other parties, to petition the court to remove the administrator. If the party shows good cause, the court must order the administrator removed and direct the administrator to immediately deliver to the court an accounting of administration. The court may make any other order necessary and appropriate under the circumstances.

Minn. Stat. § 504B.461.
Minn. Stat. § 504B.445, subd. 5.

The administration must be terminated if the city secures certification that the violations have been remedied or if there is a court order to terminate the administrator.

If the administration is terminated for either of these reasons, the administrator must submit to the court an accounting of receipts and disbursements of the administration together with copies of all bills, receipts, and other memoranda pertaining to the administration. Where appropriate, the administrator must also submit a certification by an appropriate governmental agency indicating that the violations found by the court to exist at the time of judgment have been remedied.

The administrator must also comply with any other order the court makes as a condition of discharge.

Upon approval by the court of the administrator's accounts and compliance by the administrator with any other orders that the court made as a condition of discharge, the court must discharge the administrator from any further responsibilities.

Minn. Stat. § 504B.455.

If the administrator is removed, the court shall appoint a new administrator. All parties must be given an opportunity to be heard.

RELEVANT LINKS:

G. Emergency tenant remedies action

Minn. Stat. § 504B.381.
Minn. Stat. § 504B.395.

State law also has provisions for emergency tenant remedies action. Any person authorized to bring a tenant remedies action (e.g., tenant, housing-related neighborhood organization, city, etc.) may petition the court for relief in cases of emergencies involving the loss of running water, hot water, heat, electricity, sanitary facilities, or other essential services or facilities that the landlord is responsible for providing. The petition should be filed in the county where the building is located. This law does not apply to emergencies that are a result of the deliberate or negligent act or omission of a residential tenant or someone acting under the direction or control of the tenant.

The person or organization making the petition must present a verified petition to the district court that contains the following information:

- A description of the premises and the identity of the landlord.
- A statement of the facts and grounds that demonstrate the existence of an emergency caused by the loss of essential services or facilities.
- A request for relief.

At least 24 hours before going to the court, the person making the petition must attempt to notify the landlord of his or her intent to seek emergency relief. An order may be granted without notice to the landlord if the court finds that reasonable efforts, as set forth in the petition or by separate affidavit, were made to notify the landlord but that the efforts were unsuccessful.

Minn. Stat. § 504B.425.

The court may order relief in the same manner as a regular tenant's remedies action. The person bringing the petition must serve the order on the landlord personally or by mail as soon as practicable.

Minn. Stat. § 504B.395, subds. 3, 4.

Unlike a regular tenant's remedies action, a person is not required to wait a reasonable time after an inspection to seek relief. Also, the 14-day notice requirements for a regular tenant's remedies action do not apply.

VIII. Garbage houses

Minn. Stat. § 145A.04, subd. 8.

Sometimes cities find there is a building in the city that poses a public health threat. These types of buildings are often referred to as "garbage houses," but the laws apply to any property, not just residential property. The danger from garbage houses comes from conditions inside of the building that pose some sort of threat to a person's health rather than the physical, structural condition of the building itself.

RELEVANT LINKS:

In order to be a "garbage house," the conditions have to be rather severe. For example, a couple bags of smelly garbage in the kitchen probably do not constitute a garbage house. Here are some examples of conditions in garbage houses:

- Accumulation of garbage, furniture, debris, litter, or other items that hinder the ability to move freely in the house and/or open doors.
- Significant accumulation of human or animal fecal matter or other waste.
- Significant rodent or insect infestation.

These are not the only conditions that would cause a building to be considered a public health threat. Rather, this list is an example of the types of things that might be present in a garbage house.

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 community health board. However, most cities do not have their own community health board. Therefore, dealing with garbage houses is often up to the county community health board 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 community health board (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.

Minn. Stat. § 145A.05, subd. 9.

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.

RELEVANT LINKS:

Minn. Stat. § 145A.11, subd. 4.

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

IX. 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. Ch. 1300. Minn. R. 1300.0180.

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

Hazardous building laws are supplementary to other statutory and charter provisions. This means cities may enact and enforce ordinances on the same 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, 280 Minn. 494, 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.

RELEVANT LINKS:

- 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 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.

See Section II, *Entering private property*.

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.

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

Vue v. City of St. Paul, No. 09-316 (Minn. Ct. App. April 13, 2010)(unpublished opinion).
Minn. Stat. § 463.15.
Ellis v. City of Minneapolis, No. A07-2440 (Minn. Ct. App. Jan. 20, 2009) (unpublished opinion).

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. There is no rigid formula in how the determination must be structured, but they should be sufficient to make the owner aware of the basis of the decision.

RELEVANT LINKS:

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 (Minn. Ct. App. Dec. 16, 2008) (unpublished opinion).

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.

See Section III, *Due process*.

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.

Minn. Stat. § 463.15, subd. 4.

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. § 463.151. Minn. Stat. § 463.21. Minn. Stat. §§ 429.061-.081.
See Section IX-D-4, *Recovering costs*.

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

LMC information memo, *Special Assessment Toolkit*.

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.

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.

See Section IX-D, *Removal or repair by order*.

RELEVANT LINKS:

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, 280 Minn. 390, 161 N.W.2d 626 (Minn. 1968).

City of Wells v. Swehla, No. C3-00-319 (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 a 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. *Order for Repair or Removal of Hazardous Conditions*, LMC Model Resolution. *Order to Raise a Hazardous Building*, LMC Model Resolution.

If the council determines 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 Minn. Stat. § 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, 2000) (unpublished decision). *Village of Zumbrota v. Johnson*, 280 Minn. 390, 161 N.W.2d 626 (Minn. 1968).

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

RELEVANT LINKS:

Minn. Stat. § 463.17, subd. 2.

Minn. Stat. § 463.15, subd. 4.

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.

Minn. Stat. § 463.17, subd. 2.

LMC information memo, *Newspaper Publication*.

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.

Minn. Stat. § 469.201-.207.

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.

RELEVANT LINKS:

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,* No. C3-00-319 (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.

RELEVANT LINKS:

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.

RELEVANT LINKS:

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

Notice for Public Auction, LMC Model Notice Form.

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.

4. Recovering costs

Minn. Stat. § 463.22. *Adopting an Expense Report*, LMC Model Resolution.

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 (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.

Minn. Stat. § 463.22.

Minn. Stat. § 463.161, subd. 3. Minn. Stat. § 463.21. Minn. Stat. §§ 429.061-.081. LMC information memo, *Special Assessment Toolkit*. *Gadey v. City of Minneapolis*, 517 N.W.2d 344 (Minn. Ct. App. 1994).

Even where a court has significantly modified the original city order, the city may be awarded expenses. 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.

RELEVANT LINKS:

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.

E. Eminent domain for hazardous buildings

Minn. Stat. § 463.152.
Minn. Stat. ch. 117.
Handbook, *Comprehensive Planning, Land Use, and City-Owned Land*.
Powell v. City of Clearwater, 389 N.W.2d 206 (Minn. Ct. App. 1986).

As an alternative to the hazardous building process discussed above, the city council may use its eminent domain authority. The city's eminent domain authority allows the city to take (or condemn) private property for public use. The city must pay the landowner reasonable compensation. Essentially, this is a way to require that an owner sell his or her land to a city. This procedure requires a formal court action. However, the city does not need to use the eminent domain process in order to repair or remove a hazardous condition or building.

Minn. Stat. § 463.152. Minn. Stat. ch. 117.

Handbook, *Comprehensive Planning, Land Use, and City-Owned Land*.

The city may use eminent domain to acquire any hazardous building, real estate on which any such building is located, or vacant or undeveloped real estate which is found to be hazardous within the meaning of the hazardous building laws in order to maintain a sufficient supply of adequate, safe, and sanitary housing and buildings used for living, commercial, industrial, or other purposes or any combination of purposes.

RELEVANT LINKS:

Minn. Stat. § 463.152. Minn. Stat. § 117.025.

Although the hazardous building laws declare the acquisition of a hazardous building and real estate, by state statutes, is to be a public purpose, it seems that is not enough. This is because in 2006 the state legislature made changes to the eminent domain laws that limited the purposes for which eminent domain may be used. When using eminent domain for a hazardous building, the city must have a public purpose under eminent domain law. The removal of a public nuisance is a specific public purpose defined by law. Therefore, it seems that if the city wishes to use eminent domain for a hazardous building, it would need to establish the building is a public nuisance or meets one of the other public purposes defined in state law.

Minn. Stat. § 609.74.

When making findings that a hazardous building is a public nuisance, it is a good idea to keep in mind the statutory definition of a public nuisance. A public nuisance is defined as:

- Maintaining or permitting a condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public.
- Interfering with, obstructing, or rendering dangerous for passage any public highway, right-of-way, or waters used by the public.
- Any other act or omission declared by law to be a public nuisance.

Minn. Stat. § 117.0412.

There are other requirements, including hearing requirements, which must be followed when using eminent domain to acquire property. Therefore, the city should work closely with the city attorney to ensure all requirements and procedures are properly followed.

Minn. Stat. § 463.261. Minn. Stat. §§ 117.50-.56. *In re Wren*, 699 N.W.2d 758 (Minn. 2005) distinguished by, *Instant Testing Co. v. Community Security Bank*, 715 N.W.2d 124 (Minn. Ct. App. 2006).

All buildings and real estate upon which buildings are located acquired by eminent domain are acquisitions for the purposes of reestablishment and relocation benefits. Both state and federal law protect property owners and tenants who are required to move because of an eminent domain proceeding. The city, or condemning authority, must pay relocation costs for the people who must move.

Whether it is desirable for the city to use eminent domain instead of the statutory hazardous building process depends on what end result the city would like to accomplish. For example, if the city wants to acquire the property for a public use, the city may find the eminent domain process more suitable for the situation.

On the other hand, if the city does not want to acquire the property, eminent domain may be less suitable for the situation. The city attorney will be able to assist the city in determining whether or not it is desirable to use eminent domain for a hazardous building.

RELEVANT LINKS:

X. Conclusion

Cities have a variety of tools to use when they need to deal with properties that are hazardous or pose health risks. The city will need to evaluate the different options and determine which tool best fits the needs of the particular situation. By using the tools outlined in this memo, they can make buildings in the city safer for residents.