

To: City Council

From: Sam Ketchum, Assistant City Attorney

Date: September 25, 2023

Subject: Hazardous Property Action at 1815 Livingston Avenue

---

### Background.

Neighbors of the townhome property located at 1815 Livingston Avenue have complained about nuisance and hazardous conditions as a result of the property owner passing away and the property no longer being maintained. On August 23, 2023, the City of West St. Paul's Building Official Dennis Schilling inspected the property. He determined that it has developed significant sanitary and safety issues, the interior has flooded, mold contamination exists, and building materials are deteriorating in several areas. City staff have subsequently instructed the City Attorney to begin a Chapter 463 action to abate these nuisance and hazardous conditions. Based on the City Attorney's investigation and review of property records, the previous owner owned the property free and clear of any mortgages or other interests, there are no known attempts to dispose of this property through a probate action, and there is no other party interested in abating the nuisance and hazardous conditions.

### Legal Authority and Chapter 463 Default Process.

The legal authority to abate the property's nuisance and hazardous conditions comes from Chapter 463 and City Code. Minnesota Statutes, sections 463.16 and 463.17 and City Code, section 150.063 authorize the City Council to order the owner of any hazardous property within the City to correct or remove the hazardous conditions. Minnesota Rules, section 1300.0180 defines a building as unsafe "if it is structurally unsafe, not provided with adequate egress, a fire hazard, or otherwise dangerous to human life." Minnesota Statutes, section 609.74 and City Code, section 94.15 deem it a public nuisance to maintain a hazardous property.

As the Owner is deceased and a property search has not turned up other interested parties, the City Attorney intends to proceed with service by publication and then immediately pursue a default order from Dakota County District Court. Minnesota Statutes, section 463.17, subdivision 2 authorizes the City to effectuate service by posting the abatement order at the main entrance to the building and by four weeks' publication in the City's official newspaper. After the four weeks, the Chapter 463 authorizes the City Attorney to immediately file the signed abatement order, an affidavit proving service by publication, and a motion for default with the court. Chapter 463 technically allows 20 days for anyone served with the order to file an answer before a default motion is made and requires a hearing. Regardless, given the circumstances, the City Attorney will request that the court allow the city to move for default as quickly as possible and order immediate repair.

Once the City obtains a default order from the court, it can do the abatement work or hire a contractor to do so. Under Chapter 463, the city may also move the court for approval to certify all expenses related to this action “including specifically, but not exclusively, filing fees, service fees, publication fees, attorney's fees, appraisers' fees, witness fees, including expert witness fees, and traveling expenses.” If certified, these expenses may be collected through the special assessment process. The city also has authority to sell any materials it salvages at public auction. The City Attorney will work with City staff on accounting for all expenses and otherwise disposing of the property’s nuisance and hazardous conditions.

Recommendation.

The City Council should adopt the Resolution in tonight’s packet, which deems the property hazardous, unsafe, and a public nuisance, authorizes the City Attorney to secure compliance with the attached Abatement Order, and take all legal steps to effectuate service of the resolution and abatement order.