

COUNCIL ACTION FORM

**SUBJECT: POSSIBLE AMENDMENT TO MUNICIPAL CODE PROVISIONS
PERTAINING TO DANGEROUS BUILDINGS**

BACKGROUND:

In 2005, Fire Chief Clint Petersen directed the newly hired Building Official, David Brown, to initiate fresh enforcement action on five dangerous and dilapidated buildings that had long histories of code violations and complaints by neighboring citizens. Part of that directive included collecting data on the effectiveness of the City's current enforcement tools, Ames Municipal Code Section 5.400 Abatement of Dangerous Buildings, to identify its strengths, weaknesses and improvement opportunities.

The Building Official initiated actions on the following properties:

3520 South Duff

First known complaint – 1993; Resolved – Sept. 30, 2005 (12 yrs); Razed by Fire Department

2030 Country Club

First known legal action – 2002; Resolved – August 7, 2007 (5 yrs); Repaired by owner

1911 Bloomington

First known complaint – May 20, 1997; Resolved – Dec. 30, 2005 (8 yrs); Razed by Fire Department

443 South Maple

First known complaint – 1999; Resolved – August 2008 (9 yrs); Razed by Fire Department

3611 Ross Road

First known complaint: 1995 (Note: there are two components to this case - the yard and the house. Yard enforcement was initiated July 2005, and is now nearing completion after 3 years of concerted effort in court. The dangerous building component will be initiated immediately following yard resolution.)

On August 21, 2007, the Fire Chief and Building Official presented Council with a brief pictorial survey of these and other dangerous buildings, explained staff concerns about our current enforcement tools, and received direction from Council to "explore the development of a dangerous building ordinance that would allow the City to proceed with involuntary compliance on a more timely basis." **It is staff's belief that the current ordinance that allows elapsed times between citizen complaints and code compliance ranging from 5 to 13 years does not provide a reasonable service to**

the community, is excessively costly, and falls short of the City's organizational goal to provide exceptional service to our citizens.

The staff has extensively examined our current code, a model code developed by the International Municipal Lawyer's Association (IMLA), and the City of Sioux City's Dangerous Building Code and developed several options from these sources for the City Council to consider.

Dangerous building codes have two different elements. First, it is the design of these codes to define *what it is that they are to address* (the *substantive provisions*). Second, these codes also set forth the *procedures* that will be followed in addressing problems identified under the substantive provisions (the *procedural provisions*). No changes are proposed to the substantive provisions of our Code, since they are already very adequate. The focus of this discussion is on the procedural provisions, or on *how* dangerous building abatement is carried out.

It is important to note that any dangerous building abatement ordinance brings with it possible financial risk to the City. Should the Building Official determine that a structure is in danger of collapse and the property owner is unwilling or unable to abate the danger, the City may undertake immediate abatement (even up to demolition) of the structure to preserve public safety. The City may thus need to up-front the cost of such abatement. While those costs theoretically can be recovered through tax assessment, in reality the City may never recover those funds. Given the increasing number of dangerous buildings within the community, therefore, it may be wise to appropriate a certain level of funding in each year's operating budget to up-front these costs. Unused funding could then be rolled over to the following year to continue to guard against these unexpected but important costs.

ALTERNATIVES:

1. Direct staff to modify Section 5.400 of the Municipal Code that deals with Dangerous Buildings to incorporate the nuisance abatement provisions reflected in the IMLA Model Nuisance Abatement Ordinance.

The City Council should opt for this alternative if it is believed that a new procedure is needed that will allow the staff to respond more quickly in abating dangerous building problems. This new procedure does provide for an expedited process, it does require the City to upfront the costs of abatement and, hopefully, be paid back through an assessment procedure or once the property is sold.

2. Direct staff to prepare a revision to the Municipal Code that retains the current City of Ames Dangerous Building Code and creates a separate code chapter based upon the IMLA Model Nuisance Abatement Ordinance, applicable not only to dangerous buildings, but also to other possible nuisances such as junk vehicles, accumulations of junk and debris, weeds, and other declared conditions.

The City Council should opt for this alternative if it is believed that this new model ordinance can improve the timeliness of the enforcement of other nuisances identified on both rental and owner-occupied properties.

3. Direct staff to revise our current dangerous building code provisions based upon the best practices of the existing Ames and Sioux City municipal codes.

The City Council should opt for this alternative if it is believed that a new procedure is needed that will allow the staff to respond more quickly in abating dangerous building problems, but there is a preference to develop our own ordinance provision rather than rely on a national model ordinance.

4. Retain the existing code provisions pertaining to the abatement of dangerous buildings in the City.

The City Council should opt for this alternative if the members are satisfied with the current procedure's time frame and that the current ordinance provisions better protect the rights of all property owners.

MANAGER'S RECOMMENDED ACTION:

A comparison of the major elements of the proposed options is provided below:

	Alternative #1 (Current Code Plus IMLA Model Ordinance Provisions For Abating Dangerous Buildings Only)	Alternative #2 (Create New Code for Abating <u>All</u> Nuisances, including Dangerous Buildings & Others)	Alternative #3 (Revise Code to Combine Best Parts of Sioux City and Ames Ordinances for Dangerous Buildings Only)	Alternative #4 (Current Code Provisions applicable to Dangerous Buildings)
Who Enforces	Building Official, or City Manager designee	Building Official, or City Manager designee	Building Official, or City Manager designee	Building Official, Sanitarian, Fire Inspector, or their designees
Notices Required	Certified letter, post on building, personal service, Council ordinance, Publish in paper	Certified letter, post on building, personal service, Council ordinance, Publish in paper	Certified letter, post on building, personal service, Council ordinance, Publish in paper	Certified letter, post on building
Options for City on Failure to Abate	City abates	City abates	City abates	City must take court action to have authority for abatement
Owner Appeals Process	Building Board, then court	Building Board, then court	Building Board, then court	Building Board, then court

How to Pay for Abatement	Council resolution assessing costs against property; sale of salvage material; any collection method	Council resolution assessing costs against property; sale of salvage material; any collection method	Council resolution assessing costs against property; or use owner's cash bond (see last column entry, below)	City must take court action in order to have authority to collect, assess, or garnish
Hardship procedures	cost waivers for low income or elderly optional	cost waivers for low income or elderly optional	None provided	None provided
Emergency authority	City may abate without prior notice, and then assess costs after notice and hearing	City may abate without prior notice, and then assess costs after notice and hearing	City may abate without prior notice, and then assess costs after notice and hearing	City Manager may approve, in accordance w/State Code; City must take court action to have authority to collect, assess, or garnish
Stated time limits for compliance	30 days to abate; extension may be granted by Building Official	30 days to abate; extension may be granted by Building Official	Start repairs w/in 60 days; complete w/in 6 months; extension may be granted by Board	None stated; set by Building Official's judgment
Cash bond or other surety required for time extension	None	None	Bond required in estimated cost of demolition; forfeited for failure to comply	None

Because the current code does not allow the City to undertake abatement action without first completing judicial proceedings, the current code provisions regarding the abatement of dangerous buildings result in a very lengthy and often times ineffective process that is extremely time-consuming for City staff and frustrating to neighboring property owners. In keeping with one of the City Council's priorities to improve existing neighborhoods, staff believes that a revision to the current Municipal Code is warranted that will still maintain the rights of involved property owners while expediting the abatement process. While time frames under the new codes cannot be predicted with certainty, there is no question that each of the other options will provide a much more timely response to safety and neighborhood concerns with dangerous buildings.

In considering possible ways to accomplish these purposes, adoption of the IMLA model code brings the advantage of having been upheld in courts across the nation. This would strengthen the City's position when other parties challenge the procedural elements of our dangerous building abatement ordinance.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby directing staff to prepare ordinance to modify Section 5.400 of the Municipal Code that deals specifically with Abatement of Dangerous Buildings to incorporate the nuisance abatement provisions reflected in the International Municipal Lawyer's Association Model Nuisance Abatement Ordinance.