



MEMORANDUM

DATE: 01.10.2022

TO: Mayor and City Council

FROM: Zach Walker, City Manager

SUBJECT: K-Mart Questions

On December 30th, 2021, City staff received an inquiry from Councilmember Steinmeyer regarding Ordinance 22-004. This ordinance, which will have its second reading on January 18th, authorizes condemnation, if necessary, of 4023 South Noland Road for the remediation of blight. Councilmember Steinmeyer's questions, along with the response from City staff, follows below.

1. Please provide any and all City Ordinances and policies addressing the use of eminent domain.

In Missouri, eminent domain proceedings are governed by Missouri Revised Statutes Section 523. Missouri, like many states, authorizes the use of eminent domain to condemn blighted areas for redevelopment purposes. Eminent domain allows the government to utilize private land for public good in exchange for just compensation as provided by the Takings Clause of the Fifth Amendment of the United States Constitution. In 2006, Missouri reformed its eminent domain laws in order to protect private land from being taken solely for economic development purposes. The new Missouri statute continued to allow condemnation of private property in order to remove blight, but the condemning authority cannot condemn private property solely for economic development purposes. Missouri Revised Statute Section 99.805 defines blight as property which "constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use."

2. Please provide details of the City's codes department actions allowing for and leading up to this action.

Between 2016 and 2021, the Property Maintenance Code Enforcement Division of the Community Development Department handled a total of 17 code violation cases and an additional five dangerous building cases at this property. Below is the code enforcement activity:

- **2016 Code Enforcement Cases**

- 16-00007746 – Complaint for a pot hole on Canterbury Place. Notification mailed to property owner. Property owner contacted staff about the violation and the corrections needed. Corrections made by owner. Case closed.
- 16-00003162 – Complaint for weeds on the property. No violations found by staff. Case closed.

- **Total Code Abatement Fees: \$0**
- **2017 Code Enforcement Cases**
 - 17-00006733 – Complaint for RV and semis parked in parking lot and an unsafe sign. Notification mailed to property owner. Violations corrected by property owner and case closed.
 - **Total Code Abatement Fees: \$0**
- **2018 Code Enforcement Cases**
 - 18-00008012 – Complaint for pot holes on Canterbury Place (private street). Notification mailed to property owner. Colliers International (property manager) contacted staff about the violations and the corrections needed. Corrections made by owner. Case closed.
 - 18-00007366 – Complaint for weeds and trash. Notification mailed to property owner. Colliers International contacted staff about the violations and the corrections needed. Corrections made by owner. Case closed.
 - 18-00001753 – Complaint for weeds, fence in disrepair, building maintenance issues and trash. Notification mailed to property owner. Owner addressed the weeds, fence and building maintenance violations; trash remained. City abated - \$320 spent on abatement. Case closed.
 - **Total Code Abatement Fees: \$320**
- **2019 Code Enforcement cases**
 - 19-00002331 – Complaint for a missing manhole cover in Canterbury Place. Staff left message with the property owner regarding the situation. Colliers International contacted staff about the violations and the corrections needed. Corrections made by owner. Case closed.
 - **Total Code Abatement Fees: \$0**
- **2020 Code Enforcement cases**
 - 20-000482 – Complaint for pot hole in Canterbury Place. Notification mailed to property owner. No contact made by the property owner. Violation remains
 - 20-000903 – Complaint for garbage & weeds. Notification mailed to property owner. No contact made by the property owner. Violations remained and city abated. Abatement complete, total \$1,791.54.
 - 20-001875 – Complaint for garbage & weeds – Notification mailed to property owner. No contact made by the property owner. Violations remained and city abated. Abatement completed, total \$1,794.45
 - **Total Code Abatement Fees: \$3,585.99**
- **2021 Code Enforcement cases**
 - 21-000016 – Complaint for garbage – Notification mailed to property owner. No contact made by the property owner. Violations remained and city abated. Abatement completed, total \$801.00.
 - 21-000698 – Complaint for garbage – Notification mailed to property owner. No contact made by the property owner. Violations remained and city abated. Abatement completed, total \$1,222.79.
 - 21-000988 – Complaint for weeds – Notification mailed to property owner. No contact by the property owner. Abatement scratched. Violations remained and city abated. Abatement completed as part of the Case 21-002275.
 - 21-002275 – Complaint for graffiti, garbage, weeds – Notification mailed to property owner. No contact made by the property owner. Violations remained and city abated. Abatement completed, total \$1,909.59.
 - 21-003461 – Complaint for graffiti, weeds, garbage – Case closed to start new emergency case for abatement, Case 21-003622.

- 21-003622 – Complaint for graffiti and garbage – Notification mailed to property owner. No contact made by the property owner. Violations remained and city abated. Abatement completed, total \$588.51
- 21-003606 – Complaint for abandoned signs – Notification mailed to property owner. No contact made by the property owner. Violations remained and abatement pending.
- **Total Code Abatement Fees: \$4,521.89**
- **Dangerous Building Case 19-10314 – Costs associated with board ups/demo:**
 - 11/23/2021-\$1,395 Board up K Mart building.
 - 9/7/2021- \$6,326.42 Demo Garden Center. Notification mailed to property owner. No contact made by the property owner. Violations remained and city abated.
 - 4/19/2021-\$200 Board up K Mart building
 - 8/27/2020-\$250 Board up K Mart building
 - 2/28/2020-\$220 Board up K Mart building
 - **Total Code Abatement Fees: \$8,391.42**

The number of code enforcement cases and abatements has increased over this five-year period and the responsiveness of the property owner to self-correct these violations has decreased, putting a strain on City staff and City financial resources. In the three year period between 2016 and 2019, the City expended a total of \$320 on abatements at this property. Between 2020 and 2021, the City expended a total of \$8,107.88 on abatements at this site. This represents a 24,337% increase in abatement expenses. In the last two years alone, abatement expenses have increased over 26% at this site. The abatement expenses are in addition to the costs associated with the board up of the K Mart building and demolition of the garden center building, but do not reflect the cost of staff time spent working these cases.

While the question inquired specifically about code enforcement, it should be noted that other City departments are being required to respond to issues at this site. For example, between 2016 and 2021, the Independence Fire Department was dispatched to this site a total of 51 times, or an average of 8.5 times per year.

Fire Calls for Service	
Year	Total Calls
2016	13
2017	5
2018	7
2019	12
2020	9
2021	5
Total	51
Avg. Per Year	8.5

The Fire Department has observed that call types have increasingly changed from Fire/EMS calls to more nuisance-related issues. The Fire Department has not completed any inspections of the building since closure. Since it was declared vacant, the fire alarm systems have been allowed to be terminated as well.

Incident Type	Total	Percent
Fire-related matter	9	18%
False alarm/no incident/canceled	11	22%
EMS-related matter	27	53%
Vehicular accident	2	4%
Police matter	2	4%
Total	51	100%

The Independence Police Department has also been required to respond to calls for service to this site. Between 2017 and 2021, IPD responded to a total of 342 calls for service to this site, or an average of 68 calls per year. This activity includes both calls for service as well as officer-initiated cases.

Police Calls for Service	
Year	Total
2017	94
2018	49
2019	61
2020	83
2021	55
Total	342
Avg. Per Year	68.4

Between 2017 and 2021, the top five calls for police services were as follows:

1. Suspicious person/activity/automobile: 75 calls
2. Be on the Lookout (BOLO): 20 calls
3. Informational: 19 calls
4. Alarm-Business: 17 calls
5. Building Check: 16 calls

3. Please provide the contract offer that has been made to the property owner.

Due to the lack of a response from the property owner, no contract offer has been made.

4. What has changed in the contact method from IPD and the property owner to obtain an MOU in the past year?

The Independence Police Department has not changed its process for creating a Memorandum of Understanding between the IPD and private property owners. These MOUs are in effect for a period of two years. IPD had an MOU in place with the property management company for this site, but the MOU expired in October 2021. Because the Property Maintenance Code Enforcement Division has posted the building as dangerous, most of the recent arrests made by IPD have been as a result of occupying a dangerous building. IPD does not feel an MOU is needed at this time to accomplish their objectives at this site.

5. Why the City has not taken an aggressive stance with the property owner through written code violations?

Staff believes data supports that the City of Independence has been aggressive in responding to this site. Between Police, Fire, and Property Maintenance Code Enforcement personnel, City staff have responded to over 400 calls for service associated with this site between 2016 and 2021. The nature of these calls present a direct threat to public health, safety and welfare

and have required a disproportionate amount of City resources when compared to other properties located within the community.

6. An explanation of what City attractions will visitors have to visit and utilize the proposed project that will be different than the other lodging facilities in the area.

City staff recommends initiating eminent domain proceedings due to the current and ongoing blighted conditions at this site that present a direct threat to the public health, safety and welfare of the community. No formal redevelopment plans have been submitted for consideration at this time.