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STATEMENT OF THE LEGAL ISSUES

The City of Saint Paul concurs with the City of Morris' Statement of the Legal Issues.

STATEMENT OF THE CASE AND FACTS

The City of Saint Paul concurs with the City of Morris' Statement of the Case and Facts.

ARGUMENT

Amicus City of Saint Paul submits its Brief¹ to help inform the Court of the importance of cities' ability to regulate under local housing and rental codes. The health, safety, and welfare of the residents of Saint Paul would be significantly and adversely affected if the Court were to rule that the state building code pre-empts local regulation of the use and occupancy of structures. Amicus City of Saint Paul agrees with the City of Morris that the state building codes only pre-empt local regulation of the construction and design of building, but do not pre-empt local regulation of the use or occupancy thereof; that even if pre-empted, "grandfathering" does not apply to life safety violations. Those arguments will not be repeated here.

¹ Pursuant to Minn. R. Civ. App. P. 129.03, the City of Saint Paul certifies that this brief was not authored in whole or in part by counsel for either party to this appeal, and that no other person or entity made a monetary contribution to its preparation or submission.

I. LOCAL REGULATION IN THE CITY OF SAINT PAUL

To protect the health and safety of its residents, the City of Saint Paul adopted a number of ordinances applying the distinction identified in *City of Minnetonka v. Mark Z. Jones Assoc., Inc.*, 306 Minn. 217, 236 N.W. 2d 163 (1975) between construction and design on the one hand, and occupancy and use on the other. The local code is enforced by both a complaint-based system, and by a Fire Certificate of Occupancy program that applies to commercial structures and to all residential rental structures except owner-occupied, single-family homes and owner-occupied duplexes. Like the purely residential rental license ordinances at issue in the City of Morris, the Fire Certificate of Occupancy program in the City of Saint Paul requires periodic inspection of residential rental property to assure compliance with local minimum housing standards.

The City of Saint Paul has adopted the state building code, Saint Paul Legislative Code 33.02,² and the state fire code, Saint Paul Legislative Code 55.01. These codes are applicable to new construction and design, and are enforced through a system of permits and inspections. Saint Paul Legislative Code 33.03 (“No person shall construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure without first obtaining a building permit . . .”).

² For the convenience of the court and the parties, please note that the Saint Paul Legislative Code may be found online at <http://www.ci.stpaul.mn.us/code/>.

Additionally, the City of Saint Paul adopted "Minimum Property Maintenance Standards for All Structures and Premises." Saint Paul Legislative Code 34.01, et seq. (hereinafter "Chapter 34"). The purpose of this ordinance is to protect the public health, safety, and welfare in all structures and premises in Saint Paul. The ordinance:

- (1) Establishes minimum maintenance standards for all structures and premises for basic equipment and facilities for light, ventilation, heating and sanitation; for safety from fire; for crime prevention; for space, use and location; and for safe and sanitary maintenance of all structures and premises.
- (2) Determines the responsibilities of owners, operators and occupants of all structures and premises.
- (3) Provides for administration, enforcement and penalties.
- (4) Promotes the stabilization and maintenance of structures and premises.

Saint Paul Legislative Code 34.01. In Saint Paul Legislative Code 34.02, the Council made the following express findings:

There exist in the city structures which are now or which may in the future become substandard with respect to structure, equipment, maintenance or energy efficiency. That such conditions, together with inadequate provision for light and air, insufficient protection against fire hazards, lack of proper heating, unsanitary conditions and overcrowding, constitute a menace to public health, safety and welfare of its citizens. It is further found and declared that the existence of such conditions, factors or characteristics adversely affects public health and safety and leans to the continuation, extension and aggravation of urban blight. It is further found that adequate protection of public health, safety and welfare, therefore, requires the establishment and enforcement of minimum property standards.

Consistent with state law, Chapter 34 “establishes minimum standards for the occupancy of all structures and buildings and does not replace or modify standards otherwise established for the construction, repair, alteration or use of building equipment or facilities.” Saint Paul Legislative Code 34.04. Rather than creating construction standards, Chapter 34 establishes minimum exterior and interior maintenance standards, establishes occupancy standards, establishes what facilities (such as a kitchen and a bathroom) are necessary for dwelling units. In section 34.23, it authorizes city officials to declare a structure as unfit for occupancy, and establishes a process for vacating the structure. Saint Paul Legislative Code 34.23. Violations of Chapter 34 in some cases also form a basis for subjecting a vacant property to registration (Saint Paul Legislative Code 43.02) and subjecting a nuisance property to abatement (Saint Paul Legislative Code 45.02).

While, as noted above, the state building code is enforced through the requirement of permits and inspections for the construction or alteration of structures, the primary vehicle for enforcement of Chapter 34 is the inspections required for a Fire Certificate of Occupancy, as required in Saint Paul Legislative Code 40.01, et seq. All buildings, both residential and commercial, except owner-occupied, single-family residences and duplexes, are required to have a Fire

Certificate of Occupancy. Saint Paul Legislative Code 40.01 and 40.02. To obtain a Fire Certificate of Occupancy, an owner submits the property to periodic inspection to certify compliance with the relevant city and state health and safety codes, including the state building code, the state fire code, and Chapter 34. Saint Paul Legislative Code 40.04 -.07. It is illegal to occupy a structure without a Fire Certificate of Occupancy. Saint Paul Legislative Code 40.12.

II. THE NEED FOR LOCAL REGULATION IN THE CITY OF SAINT PAUL

As a large city of the first class, with a high number of rental properties, and an aging building stock, the City of Saint Paul needs the ability to regulate the use and occupancy of structures to address very real health and safety concerns.

The City of Saint Paul, the capitol of the State, has a population of 287,151 as of the last census. According to that census, it has a lower median home value than the state as a whole, and a higher percentage of the population below the poverty line. The higher level of poverty means that many tenants lack the means to enforce their statutory right to safe housing and so rely on the City to do this.

The City of Saint Paul has 115,713 housing units in about 53,000 residential structures, plus about 3000 multi-unit residential structures. About 17,600 structures have Fire Certificates of Occupancy. Of these about 13,100 are residential. Census data shows that about 88% of the single-family, duplex and tri-

plex residential structures in Saint Paul were built prior to 1963. The median date of construction for these structures is 1922. Thus, Saint Paul has a large number of buildings and the over-whelming percentage of residential property was built prior to the adoption of the state building code.

As indicated above, the Council of the City of Saint Paul concluded that in Saint Paul, substandard housing was and is a serious problem in need of a vigorous response by government to protect the health and safety of the residents of Saint Paul.

According to the Saint Paul Fire Marshal from September 1, 2006, to August 31, 2007, the fire inspectors in Saint Paul identified and ordered correction of 46,548 individual violations of state or local codes. Many properties, especially those considered most dangerous, have multiple violations. Some violations are as innocuous as failing to post the address of the owner on the premises. Many others are potentially serious, such as the intentional disabling of smoke detectors and the improper installation or maintenance of electrical equipment. The sheer volume of violations, along with the potential safety risks, is staggering.

This highlights the practical problem with Appellant's position. Suppose a Saint Paul fire inspector discovers an unsafe electrical installation. According to Appellant if this unsafe installation was allowed under a previous state code

provision, it must be allowed to remain. Appellant would only allow a city to require the correction if the condition was created contrary to the then-existing code. This often happens if remodeling was done without proper permits and inspections. Appellant would require the fire inspectors to try to determine when the installation was made, what the code was at that time, and also determine if it was later altered, and if it was, what the code was at the time of the alteration. On the volume of cases in Saint Paul, this would be an unjustifiable administrative burden. Further, if an owner did not take out a permit for an electrical installation, unfortunately a common occurrence, the inspector has no way of determining when the installation was made, and hence whether it complied with code at that time.

For example, years ago, when most of Saint Paul's housing stock was built, smoke detectors did not exist. Now, however, it is widely recognized that smoke detectors make a significant contribution to public health and safety. According to the U.S. Fire Administration (USFA), a division of the Federal Emergency Management Agency (FEMA):

In 2003, fire departments responded to 388,500 home structure fires in the United States that claimed the lives of an estimated 3,145 people. Working smoke alarms greatly reduce the likelihood of a residential fire-related fatal injury by providing occupants with early warning and giving them additional time to escape.

Public/Private Fire Safety Council White Paper: Home Smoke Alarms and Other Fire Detection and Alarm Equipment, <http://www.usfa.dhs.gov/citizens/all>

[_citizens/home_fire_prev/alarms/alarms_whitepaper.shtm](http://www.usfa.dhs.gov/citizens/all_citizens/home_fire_prev/alarms/alarms_whitepaper.shtm). USFA also estimates that 20% of installed smoke detectors are not operational, primarily due to missing or dead batteries. Id. Thus, proper maintenance of smoke detectors likewise is a matter of significance to public safety.

The City of Saint Paul recently experienced this first-hand. On June 19, 2006, a fire at 263 Sherburne, on old residence in Saint Paul, demonstrated the tragic necessity for local regulation of use and occupation of structures. This property, built in 1900, was a three-story, four-unit building, subject to inspection for a certificate of occupancy.

City inspectors notified the owner, Jose Perez of certificate of occupancy inspection for 263 Sherburne for April 12, 2006. Mr. Perez did not appear, so another notice was sent for an inspection on June 15, 2006. He did not appear then either. One of the requirements of the inspection was to provide an affidavit establishing that all the smoke detectors on the property were working. The owner failed to provide the affidavit as well.

On June 19, 2006, a juvenile started a fire on a couch in unit number 4 which spread elsewhere in the structure. As a result of this fire, twenty-three-year-

old Julia Salgado died, another adult suffered critical burns, and six children were injured, including two infants found unconscious at the scene. An inspection after the fire determined that the smoke detectors were not working. It was also discovered that unit 4, where the fire occurred, was over-occupied, and that there was an illegal fifth unit that lacked adequate egress. The owner was later convicted of multiple code violations and was sentenced to serve 20 days in the workhouse.

Working smoke detectors, and also compliance of occupancy limits and egress requirements, could have made a difference in this matter. This tragedy shows that deficient structures pose real safety threats. The City of Saint Paul, even with a vigorous enforcement effort, will not get every structure in to full compliance with Chapter 34. However, substandard housing will proliferate if, as Appellant's argue, the state building code pre-empts City enforcement efforts, certainly putting more residents at risk of tragedy.

In addition to the Fire Certificate of Occupancy program, the City of Saint Paul enforces Chapter 34 through the Code Enforcement division of the Department of Safety and Inspections. The Code Enforcement division operates on a complaint basis; that is inspections are conducted in response to complaint. They inspect both rental and owner-occupied properties, and also operate the vacant building program and the nuisance abatement program. Their records show

they conducted 50,319 inspections between September 1, 2006, and August 31, 2007. The majority of deficiencies found involve sanitation issues such as garbage and weed accumulation. However a substantial number, 925, involved a lack of basic facilities. In this context “basic facilities” refers to things like sinks, tubs, sewer drainage, and heating equipment. See Saint Paul Legislative Code 34.11.

These inspections, if serious deficiencies are found, can lead to an order to vacate the property because it is unfit for human habitation. In these extreme cases, the property constitutes a material endangerment to the health or safety of the occupants. See Saint Paul Legislative Code 34.23. City records show that in 2006 the inspectors condemned 470 structures because they were unfit for human habitation. So far in 2007, the City of Saint Paul has demolished 20 nuisance properties. Demolition is the last resort for nuisance structures that are so dilapidated, so dangerous, and so far out of code compliance that it is uneconomic for anyone to repair them.

The picture that emerges when all of these facts are considered is that too many property owners, especially landlords, either cannot or will not spend the money necessary to maintain their property in a safe and healthy way. Unless required to do so by the City, many properties will not meet minimum health and

safety standards, causing real harm to people, especially the most vulnerable people like children and the poor.

III. CONCLUSION

The City of Saint Paul, like other large Minnesota cities with older housing stock, faces a substantial challenge to address substandard structures. They can be a blighting influence and one of the single largest obstacles to a good quality of life for the neighbors and residents. Cities need the tools to address this challenge with local code enforcement and rental inspections. This attack by Appellant on local authority threatens to diminish, or even eliminate, the tools cities need.

Amicus City of Saint Paul agrees with position and arguments of the Respondent City of Morris that local regulation of use and occupancy is not preempted by state law. It has enacted a maintenance code, Chapter 34, and an enforcement mechanism, the Fire Certificate of Occupancy, to advance its policy of protecting the health and safety of residents by establishing minimum property standards and making owners responsible for their properties. These standards are critically necessary to Saint Paul with its large stock of older structures.

Substandard housing not only blights neighborhoods, which would be reason enough to establish minimum maintenance standards, it can be life threatening. In

fact, in Saint Paul as recently as 2006 life was lost to fire where smoke detectors were not kept in working order.

For these reasons, Amicus City of Saint Paul respectfully requests the Court to affirm the decision of the Court of Appeals.

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