

**A Guide To Assist  
Local Governments  
In Dealing With  
Dangerous Buildings**

X Inspect, X Document, X Notify & X Abate X or Enforce	§ Nuisance *	Dangerous  Buildings
	§ Health *	
	§ Safety *	
	§ Zoning *	
	§ Fire *	
	§ Environment *	

**Field Test Draft**

**August 2000**

**Prepared by a  
Work Group of Stakeholders**

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## Acronyms

NDAC – North Dakota Administrative Code  
NDCC – North Dakota Century Code

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## Foreword

During 1999, the state's League of Cities and Department of Health observed growing interest in the safety, health, blight and nuisance implications of buildings across the state. During the fall of that year and into the year 2000, the following individuals came together as a work group to identify issues related to dangerous buildings. The work group's members are listed below.

### Cities

Jerry Hjelmstad	ND League of Cities
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Jerry Lein	City of Wahpeton
Jack Hegedus	Consulting Building Inspector

### Counties

Terry Traynor	ND Association of Counties
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### Health Districts

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### Other Agencies

John Elstad	Office of State Fire Marshal
Jerry Ratzlaff	ND Building Officials Association
Martin R. Schock	ND Department of Health
Rich Gray	ND Division of Community Services
Steve Spilde	ND Insurance Reserve Fund
Lyle Witham	Office of Attorney General

A survey questionnaire was developed and distributed to counties and cities; more than 230 responses were received. About three of four respondents indicated they had an "abandoned" building problem. This guide offers information that pertains to categorical issues among the collective survey responses.

## Disclaimer

This guide provides information that local government officials can use to help them deal with the nuisance, health and safety issues of buildings. A preferred hierarchy in dealing with buildings would be (1) repair for use, (2) salvage for lumber and/or metal, and (3) demolish for burial or burn. The guide is not a substitute for legal advice of attorneys for local governments; the work group recommends consulting them throughout the process of dealing with building issues.

## Exclusion

The term "abandoned" has often been used to imply neglect. In this guide, the term abandoned does not refer to a condition of a building. Instead, it refers to the building(s) on property owned by people who are delinquent in payment of property tax. NDCC ch. 57-28. This guide does not provide information in dealing with these buildings. Cities can inspect the building(s) on tax-delinquent property if warranted so as to forewarn them of potential impending hazards that may become a local government liability.

## Relevant State Law

Several areas of state law may assist local officials to encourage property owners either to renovate or remove dangerous (or unkept) buildings on their property. If landowners refuse to abate the nuisance created by the building(s), these same laws provide ways for local officials to abate or remove the building(s) and charge the cost back to the landowner as a lien or judgment on the property.

- i Nuisance law (NDCC chs. 42-01 and 42-02).
- i Public health law (NDCC ch. 23-35).
- i City ordinance authority (NDCC ch. 40-05).
- i County and township zoning authority (NDCC ch. 11-33 and NDCC §§ 58-03-11 through 58-03-15).
- i State fire marshal (NDCC ch. 18-01).
- i Environmental contamination (primarily NDCC title 23 and NDCC ch. 61-28 and related rules).

Each of these laws has unique function and notice requirements. Under all of these laws, the landowner is responsible for the cost of removal and abatement of the nuisance or dangerous condition.

The nuisance law allows one to collect additional damages and attorneys' fees, but also has additional costs and time delays. A judgment under the nuisance law allows one to transfer the judgment to other counties or states, and to execute on the judgment there. A judgment is valuable, however, only when the owner of the property with the dangerous buildings has additional resources.

Public health officers or the state fire marshal may act under the law if a condition on the property poses an immediate health or safety threat. They have authority to give notice and remove the danger in a short period of time.

A dangerous building ordinance gives local communities the best opportunity to structure a process that addresses the specific needs and circumstances faced by that community. Townships and counties may agree to work together to pass and enforce a dangerous building zoning ordinance.

Properties should always be examined to determine if there is environmental contamination on them, and the state Department of Health should be contacted if such contamination is discovered.

### **i Nuisance Law**

The nuisance law is more complicated and expensive to enforce than the other laws listed above, but provides the most options in terms of tailoring a remedy to meet any unique circumstances, and for collecting damages, costs and attorneys' fees if the landowner has the resources to pay but is refusing to clean up the building.

NDCC § 42-01-01 defines a nuisance as follows:

A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission:

1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;  
... or
4. In any way renders other persons insecure in life or in the use of property.

A nuisance is a private nuisance if it “affects a single individual or a determinate number of persons in the enjoyment of some private right not common to the public.” NDCC § 42-01-02. A nuisance is a public nuisance if it is “one which at the same time affects an entire community or neighborhood or any considerable number of persons.” NDCC § 42-01-06. In addition to the civil remedies described below, any person who maintains a public nuisance or “who willfully omits to perform any legal duty relating to the removal of a public nuisance” may be charged criminally with a class A misdemeanor. NDCC § 42-01-15.

The attorney general, the state health officer, the county’s state's attorney, or any citizen of the county where a nuisance exists may bring an action to abate and perpetually enjoin a nuisance. NDCC § 42-02-01. Injunctions for nuisance are granted on the same terms as other injunctions. NDCC § 42-02-02. A permanent or final injunction may be granted when injunctive relief is necessary "to prevent the breach of an obligation existing in favor of the applicant" and one of the other four conditions required under NDCC § 32-05-04 is satisfied. *Magrinat v. Trinity Hosp.*, 540 N.W.2d 625, 629 (N.D. 1995). The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. NDCC § 42-01-11. In addition to abatement and damages, reasonable attorney fees may be collected by a successful plaintiff. NDCC § 42-02-09. The notice and due process requirements for an injunction are the same as for any other injunctive proceeding. NDCC chs. 32-05 and 32-06. The civil action for any damages resulting from the nuisance are the same as for any other tort action. NDCC § 32-03-20.

In sum, there are several advantages to using nuisance law as a remedy for dangerous or unkept buildings. It allows one to get a court order forbidding the nuisance and ordering its removal. This prevents future lawsuits on the value of the property and whether it was appropriate to remove or tear down the building. It also allows collection of any damages caused by the nuisance, the cost of removal of the building, and all reasonable attorneys’ fees accumulated in getting the injunction and order for removal. When judgment is entered, the judgment can be transferred and collected in any county or state where the landowner has property.

The main disadvantage of using the nuisance law is that it takes time to go through the legal process, and the process can be expensive. It is a remedy one should consider if the local official expects litigation, and the company or person that owns the property has deep enough pockets to pay for removal of the nuisance but is refusing to take action. However, nuisance is not a good option if the landowner is judgment proof (does not have enough assets to collect anything if a judgment is executed upon after it is entered). In addition, the building must also be in a location and in such condition that it constitutes a public nuisance as defined by North Dakota NDCC 42-01-06 (although it might still be a private nuisance for a neighboring property owner).

Thus, two of the first things a local official should investigate before choosing which legal option to take regarding a dangerous and/or abandoned building are: (1) whether the building – because of its condition, location and other factors – constitutes a public nuisance; and (2) whether the landowner has the financial resources either to repair or remove the building.

## **i Public Health Law**

Another law, NDCC § 23-35-09, allows public health units to abate and remove nuisances, sources of filth and causes of sickness.

1. If necessary for the protection of public health to abate or remove any nuisance, source of filth, or cause of sickness, the board of health shall serve notice on the owner or occupant of the property requiring the owner or occupant, at the owner's or occupant's expense, to remove or abate the nuisance, source of filth, or cause of sickness within a time specified by the board, not exceeding thirty days. If the owner or occupant fails to comply with the notice to remove or abate or if the nuisance, source of filth, or cause of sickness exists on property of nonresident owners or on property the owners of which cannot be found, the board of health may remove or destroy the nuisance, source of filth, or cause of sickness at the expense of the appropriate city or county, which shall charge the expense against the lot, piece, or parcel of land on which the work is done.

2. The governing body of the city or county may levy and assess against the property the cost of the removal or destruction of a nuisance, source of filth, or cause of sickness, and the member of the governing body who is responsible for streets shall return and file the assessment in the office of the auditor of the city or county. The auditor shall publish, in the same manner as provided under section 40-22-06, the amount of the assessment together with a notice of the time and location the governing body will meet to consider the approval of the assessment. Each assessment must be recorded, collected, and paid as other taxes are recorded, collected, and paid.

3. If a board of health determines it necessary for the preservation of public health to enter any building within the board's jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into the building, the local health officer, or a designated agent of the local health officer, may make a complaint under oath to a district judge within the jurisdiction of the board of health stating the facts in the case which the local health officer, or a designated agent of the local health officer, has knowledge. If a warrant is issued and if requested by a board of health, a county sheriff or city police department shall provide assistance to that public health unit in any action to search or seize material in or on any private property to destroy, remove, or prevent the nuisance, source of filth, or cause of sickness, if there is probable cause to believe a public health hazard or public health nuisance exists on or in that property, and shall carry out any other preventive measures the public health unit requests. For purposes of this subsection, a request from a public health unit means a request for assistance which is specific to a public health nuisance and is not a continuous request for assistance.

One of the major advantages of this law is that it allows the local health unit to issue an administrative order for the removal of the nuisance, sources of filth or cause of sickness, and to then charge the expense of that abatement to the property administratively. This saves considerable legal expense and time. It also allows one to address a genuine threat to public health quickly.

One of its disadvantages is that property owners often will simply allow the property to go back to the county, and the local body that cleaned up the property is stuck with the expense. The

lien is not transferable and collectable in the same way a judgment is – it goes only against the property where the building(s) was/were located. This law should be used only when it is necessary to remove a building “for the protection of public health” as provided in the law. If the law is used when there is no genuine threat to public health, the local official may be opening a door to potential litigation. The reasons why the building constitutes “a public health hazard or public health nuisance” and, therefore, must be removed “for the protection of public health” should be included in the written notice given under the law, as well as a summary of the specific facts that make the building a nuisance, source of filth or cause of sickness (for example, it is an attractive nuisance to children that is about to collapse, or it has become habitat to skunks, rats and other disease-carrying vermin). The notice requirements stated in the law should be followed strictly to avoid any litigation for failure to follow due process.

### **i City Ordinance Authority to Deal with Dangerous Buildings**

A third law, NDCC ch. 40-05, allows municipalities dealing with dangerous buildings to pass a city ordinance that specifically addresses defective buildings. This process puts the provisions of the law and the authority to enforce the law in the hands of local municipal officials. Each local community can tailor the ordinance to fit its individual needs, and then make enforcement decisions based upon what is best for that community. A dangerous building ordinance is the best option for local communities if they have the time and resources to enact and enforce such a law.

It is critical that any dangerous building ordinance have articulated standards about when a building is defective and constitutes a public danger or nuisance. The ordinance also should provide for adequate due process, including written notice and opportunity for a hearing, before official action is taken to repair or remove the building. Note that the model ordinance focuses on buildings that are *public* nuisances. Local officials enforcing the ordinance must be trained to follow the due process procedures set forth in the ordinance. The reasons why the building constitutes a public danger or nuisance and, therefore, must be removed for the protection of public welfare should be included in the written notice given under the law, as well as a summary of the specific facts that make the building a public danger or nuisance.

### **i County and Township Zoning Authority to Address Dangerous Buildings**

North Dakota law allows counties to regulate property for the purpose of promoting health, safety, morals, public convenience, general prosperity and public welfare. NDCC §11-33-01. Among the relevant zoning powers granted to counties to deal with dangerous buildings are the following:

3. To regulate and restrict the erection, construction, reconstruction, alteration, *repair, or use* of buildings and structures... (Italics provided.) NDCC § 11-33-03.

Townships have similar zoning authority. NDCC § 58-03-11 through 58-03-15. In fact, townships have greater authority to correct a non-conforming use or condition and charge the cost of such correction against the property as a lien than counties do. Compare NDCC § 58-03-14 and NDCC § 11-33-17.

Both counties and townships face issues relating to correcting dangerous buildings that cities do not face. The law does not allow counties or townships to prohibit or prevent the use of land or

buildings for farming or ranching or the normal incidents of farming or ranching. Once buildings are no longer used for farming or ranching or their normal incidents, counties or townships may presumably require their repair or removal, but only if they are a public danger or nuisance. Establishing that a building is a public danger or nuisance is more difficult in a rural area because buildings located away from people are less likely to be a *public* nuisance “which at the same time affects an entire community or neighborhood or any considerable number of persons.” See NDCC § 42-01-06 (definition of a public nuisance).

As with cities, it is critical that any zoning ordinance addressing dangerous buildings have articulated standards about when a building is defective and constitutes a public danger or nuisance. Likewise, the ordinance also should include adequate due process, including written notice and opportunity for a hearing, before official action is taken to repair or remove the building. Note that the ordinance should focus on buildings that are *public* nuisances. Local officials enforcing the ordinance must be trained to follow the due process procedures set forth in the ordinance. The reasons why the building constitutes a public danger or nuisance and, therefore, must be removed for the protection of public welfare, as well as a summary of the specific facts that make the building a public danger or nuisance, should be included in the written notice given under the law.

The law allows counties and townships to make separate zoning ordinances, but also allows them to contract to provide a single zoning authority. See NDCC § 11-33-20 (stating that county zoning “does not prevent townships from making regulations as provided in sections 58-03-11 through 58-03-15”); NDCC ch. 11-35 (allowing for regional planning and zoning authority); NDCC ch. 54-40.3 (allowing for a cooperative or joint administration agreement). If counties or townships wish to enter a joint administrative agreement, a private attorney or local state’s attorney should be consulted.

## **i State Fire Marshal**

The fourth option, for buildings or other structures that are a fire hazard, is to contact the state fire marshal. NDCC § 18-01-14 provides:

If the state fire marshal, a deputy fire marshal, or any other officer mentioned in section 18-01-06 finds a building or other structure which is subject to fire because of age or dilapidation, defective or poorly installed electrical wiring or equipment, defective chimneys, gas connections, or apparatus, or for any other reason, and is so situated as to endanger other buildings or property, such officer shall order such buildings to be repaired or torn down or all dangerous conditions therein to be remedied or abated. If the officer finds in a building or upon any premises any combustible or explosive material, rubbish, rags, waste, oils, or gasoline, or any condition which is dangerous to the safety of such building or property, the officer shall order such material removed or such dangerous condition remedied or abated. Any owner, agent, lessee, or occupant of a building or premises upon which a condition described in this section is found and upon whom an order of abatement is served shall comply with such order within the time therein limited.

This option is available only when the property endangers other buildings or properties. The fire marshal has limited resources and will step in with this remedy only when the building poses a substantial threat and the local remedies are not sufficient. The notice, due process and appeal provisions are contained in NDCC §§ 18-01-15 through 18-01-27.

The state fire marshal or any deputy fire marshal may issue an order for the immediate removal or correction of a dangerous condition if he or she finds any condition “which is a danger or a menace to the safety of life and limb of the occupants of that building” or of “any adjacent building.” NDCC § 18-01-15. The fire marshal’s order of abatement must be in writing and must state concisely the grounds upon which it is based. It must be made against the owner, lessee or occupant of the building or premises and must be served personally or by registered or certified mail. If the owner of such premises is not a resident of this state and the premises are unoccupied, or if the owner of the premises has no known address, the order of abatement must be served by publication for three successive weeks in the official newspaper of the county. NDCC § 18-01-16. The owner, lessee, agent or occupant of any building or premises described in an abatement order may complain or appeal in writing to the state fire marshal within five days from the service of the order. NDCC § 18-01-17. If a person is aggrieved by a final order of the state fire marshal after the hearing, such person may appeal to the district court of the county, and then to the supreme court from an adverse decision of the district court. NDCC § 18-01-18.

## **i Environmental Contamination**

Before tearing down a building or acquiring property, local officials should examine the property for hazardous or dangerous wastes or materials, or other types of environmental contamination. Just as there are certain liabilities for failure to address dangerous conditions relating to buildings, there are potential liabilities for failure to contain, mitigate or clean up polluted properties once the political subdivision acquires title to those properties through tax foreclosure or other liens. There are advantages under both federal and state law to addressing these problems sooner rather than later, and to addressing pollution before becoming an owner and a potentially responsible party. The Environmental Section of the North Dakota Department of Health should be contacted if any significant environmental contamination is found on the premises of a dangerous building or property. Certain environmental laws may come into play that will assist in cleaning up the property and holding the landowner and other responsible parties accountable for any contamination.

## **i Affidavits and Warrants**

An administrative search warrant may be obtained under NDCC ch. 29-29.1 to determine the condition of the property if access is denied. NDCC § 29-29.1-01 provides:

1. Notwithstanding the provisions of chapter 29-29, any official or employee of the state or of a unit of county or local government of North Dakota may, under the conditions specified herein, obtain a warrant authorizing to conduct a search or inspection of property if such a search or inspection is one that is elsewhere authorized by law, either with or without the consent of the person whose privacy would be thereby invaded, and is one for which such a warrant is constitutionally required.

2. The warrant may be issued by any magistrate whose territorial jurisdiction encompasses the property to be inspected.

## Model Ordinance

### Purpose

The model ordinance for “dangerous buildings” offered by the state’s League of Cities has been updated so as to conform with the State Building Code and the Uniform Code for the Abatement of Dangerous Buildings. These codes are published by the International Conference of Building Officials. The purpose of the ordinance is to establish the umbrella process for the city governing body and its employees or its agents acting on its behalf. When actions conform to this process, notices or orders are enforceable.

### Provisions

The model ordinance describes the defects of a building that deem the building as a “dangerous building,” provided one or more defects exist to an extent so as to endanger the safety, health or property of the public or its occupants. It also includes the following provisions:

- ' standards for the repair, vacation or demolition,
- ' declaration of “dangerous buildings” as public nuisances,
- ' duties of the building inspector,
- ' duties of the city governing body,
- ' duties of the city attorney, and
- ' penalties for disregarding notices or orders.

The model ordinance does not deal with those buildings that do not have defects within the scope of the definition for “dangerous buildings,” but are abandoned by owners as evident by non-payment of taxes. However, the ordinance includes within the definition for a dangerous building a general provision that a building is a dangerous building “Whenever . . . [it] . . . is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence[,]” “. . . provided such condition exists to the extent that the life, health, property or safety of the public . . . are endangered.”

### Implications

Effective resolution of concerns surrounding dangerous buildings entails many of these action elements:

- ' adoption of an ordinance for dangerous buildings,
- ' designation of a building inspector,
- ' training of the building inspector,
- ' identification of the building’s defects and of the building’s owner(s),
- ' participation of other probable stakeholders,
- ' follow-up by the building inspector and the city governing body,
- ' process documentation, or
- ' frequent consultation with the city’s attorney.

## Possible Hazards

Older buildings often have many things in them besides wood and nails. They were built in a time when hazards we now consider common were unknown. A lifetime of use often left them with contents that sometimes prove to be dangerous. The advice given herein is not a substitute for appropriate judgement in each specific circumstance when dealing with buildings.

Some hazards found in older or unoccupied buildings are described below; the list is not all inclusive. Although hazard difficulties are bumps in the road that can delay demolition of a building, don't let hazards discourage you. Don't be afraid to ask questions, and document your inquiries.

### Asbestos

Utilized for its fire retardant and structural properties, asbestos was widely used in buildings from the 19<sup>th</sup> century through the 1970s. Standards for removal of asbestos from buildings to be demolished may apply. (See, for example, NDAC 33-15-13-02.)

Items that may need testing for asbestos content are rigid shakes, flooring tiles and pipe insulation. Old boilers often were encased in asbestos, laid on like putty in a wet slurry, which then dried to a friable texture. Testing of substances for asbestos must be performed by a certified laboratory to determine percentage of asbestos content. If asbestos is found, a licensed asbestos-removal company must be called in to abate the asbestos before demolition can continue. The cost can be hundreds of dollars easily, and thousands less commonly. Nevertheless, it is a cost that must be incurred at some time, and it might as well be the present.

Asbestos can be buried at municipal waste landfills with consent of the landfill owner/operator or at inert waste landfills with consent of the landfill owner/operator and the Waste Management Division of the state Department of Health. State rules apply to burial of asbestos materials.

DON'T grind or saw potential asbestos-containing materials. You may spread contamination to the entire building or area.

### Hazardous Chemicals

The following list is not exhaustive; it includes the common chemicals and materials that may be encountered while inspecting older buildings. All chemicals and hazardous materials must be removed for proper disposal prior to the salvage, demolition or burning of the building.

Carbon tetrachloride – This chemical is found in old glass globe-type fire extinguishers that were hung in cone-shaped holders on the wall. If encountered, these should be hauled outside immediately. Break them from a distance in a five-gallon can or a barrel of clay absorbent, like kitty litter. Carbon tet, as it was commonly known, worked to extinguish fires by consuming all the oxygen in the immediate area, which is notably dangerous for people. If the extinguishers are broken, run, don't walk, away. Carbon tetrachloride is also injurious to the liver.

Gopher and insect poisons, and seed treatments – The most poisonous of these compounds is sodium fluoroacetate, or 1080, as it was known. Marketed under imaginative names like

“GopherGone” and others, it was characteristically sold in glass jars to which the labels may or may not adhere. Also high on the list were strychnine-treated grain for pocket gophers and sodium arsenate, sold as a grasshopper poison under the trade name “Paris Green.” Organic poisons like Chlordane and DDT still surface in old basements, and must be disposed of properly.

Old elevators often had seed treaters on the second floor that used mercury or arsenic seed treatments. Brand names like “Panagen” and “Vitavax” are a tip-off. Barrels or cans oozing a red, mercurochrome-like substance or a gray or green dust are confirmatory.

These compounds should be reported to your county extension agent, the local public health unit, or the state’s Agriculture Department. They can give you instructions for handling and storage and for listing them for disposal under that their Safe Send Program.

### **Fuels and Oils**

The granddaddies of unexpected problems, these usually exist in a tank in the basement or buried on the lot. Tanks must be emptied in a safe manner, and the soil checked for contamination. Contact the state Department of Health’s program for Underground Storage Tanks (UST) for help. The emptied tanks need to be removed or filled with inert material.

### **Trace Metals – Lead and Chromium**

Buildings that were last painted in the early 1960s – especially white, red, and yellow – may contain lead or chromium in the paint. No paint produced after 1978 contains lead. Main hazards of exposure are breathing the dust from demolition if the paint is peeling or chipping. Wear a respirator that has a high efficiency particulate air (HEPA) filter while dealing with this dust. “Municipal waste” landfills can accept lead paint waste.

### **Fecal Material**

All enclosed spaces with a buildup of fecal material in them should be considered hazardous. Wear a particle mask or a HEPA mask to keep aerosols from entering your lungs. Histoplasmosis is a problem with bat dung; psittacosis can be contracted from pigeon droppings. Rodent droppings can harbor everything from salmonella to cholera, so a half-face respiratory mask is a must. Wash after you’re done inspecting, dismantling or demolishing.

The hantavirus can cause serious respiratory illness. The fecal matter of rodents, particularly mice, can contain the hantavirus. Contact with rodent fecal matter should be avoided – and inhalation of the air borne dusts from such matter also should be avoided. When entering older, un-maintained buildings, wear protective clothing including latex or rubber gloves. Discard the used gloves, and wash or shower as the situation warrants.

## Step-by-step Process

Several areas of state law deal with discrete aspects of dangerous or unkept buildings; for example, health, safety hazard or fire hazard. Some areas of state law allow local governments to adopt ordinances related to safety and land-use zoning. These areas of state law are described elsewhere in this guide (see Table of Contents). Success in dealing with owners of these buildings requires an action strategy irrespective of relevant state law; for example, inspection, documentation and owner notification.

ACTION PATHWAY	ELEMENT	AREA OF LAW
X Inspect building & determine owner, X Document observations, X Determine element(s), § X Follow due process and X Seek abatement X or Enforce	Nuisance *	§ 42-01 & 42-02
	Health hazard *	§ 23-35
	Safety hazard *	Building ordinance
	Land use conflict *	Zoning ordinance
	Fire hazard *	§ 18-01
	(Soil or water pollution) *	§ 61-28 & others)

A building that is a visual blight is not a public nuisance, except perhaps in circumstances of prominent public interest, such as an entrance to a national park. A building that is a visual blight, but not otherwise dangerous or unkept as described in an ordinance for “dangerous buildings”, can be abated through other community endeavors, such as local zoning.

Members of the work group who have successfully dealt with dangerous, unkept or abandoned buildings were a resource for expressing a procedural process of dealing with these buildings. If the city or other local government does not have a qualified inspector or if assistance by an environmental health practitioner of the local public health unit is not available, it should obtain the services of a competent individual – for example, a city engineer, a county engineer, a consulting building inspector or another district’s practitioner.

**& Inspect tax delinquent, vacant or unattended properties annually, and inspect when a possible nuisance or safety, health or fire hazard is observed or reported:**

Investigate – determine elements of the matter and collect and document evidence details.  
 Tools: notepad, camera, tape measure and protective hat, respirator, gloves and shoes.

Determine owner(s), lien holder(s) and any recent property transfers.

Based upon elements, determine applicable law or ordinance in the event the owner does not voluntarily abate those elements.

- If miscellaneous junk, rubbish, weeds or un-mowed grass;
  - If possible, use city or other government zoning ordinance.

– Otherwise use NDCC §42-01-06.

If filth or sickness, then use NDCC §23-35-09 and -13 (order of local health officer).

If building is defective or decrepit, then use adopted building ordinance (authorized by NDCC 40-05) or building code.

If site's use is contrary to land uses in the neighborhood, then use adopted zoning ordinance.

( If apparent or suspected soil or water pollution, notify state Department of Health.)

**& Visit with property owner(s):**

Face to face, by phone or by mail – unless proceeding under a municipal ordinance, then follow the notification procedure therein.

Explain the elements observed, per above.

Establish (and document) abatement method(s)

Negotiate (and document) abatement completion deadline date.

Determine resources of property owner.

If this doesn't work, issue an order under the applicable statute.

Hand it to them; or

Mail – send certified or obtain affidavit of mailing; or

Use sheriff service; or

If no owner, give notice by publication in official local newspaper.

**& Wait for action deadline date.** – Then inspect on deadline date for compliance.

**& When owner does not take action by deadline date:**

If elements relate to filth or sickness, Health District can issue order to local jurisdiction to abate. A city or county can assess costs and file statutory lien against property. A hearing under the statute is optional.

If elements relate to a defective building, follow the remedial procedures provided in the building ordinance or take the issue to court for an order for civil abatement. If court issues an order that owner does not follow, then criminal penalty applies.

If element(s) relate to zoning or building code, prepare and sign complaint and send it to local governing board. Have this board set a hearing.

## **Bibliography**

### **Information in print and/or on the web**

“A Common Sense Approach to Lead Based Paint”

<http://www.health.state.nd.us/ndhd/pubs/prevent/leadpain/leadpain.htm>

“Emission Standard for Asbestos” – state rules

<http://www.health.state.nd.us/ndhd/envIRON/ee/air/regs/331513.pdf>

“Guide to Demolition, Disposal and Open Burning of Houses”

<http://www.health.state.nd.us/ndhd/pubs/envIRON/burning/burning.htm>

“Guideline 22A - Inert Waste Disposal Variance”

This document is available from the Department of Health, Bismarck ND.

Local Government Environmental Assistance Network

<http://www.lgean.org/html/hottopics2.cfm>

## **Appendix: Contacts**

### **Interpretation of state law (and cost recovery) –**

- City or county attorney
- State Association of Municipal Attorneys
- Office of the Attorney General

### **Achievers –**

- Cities that have successfully dealt with dangerous buildings. Some examples are Bismarck, Dickinson, Bowden, Cavalier, Glen Ullin, Rugby, Oakes, St. John and Wilton.

### **Building codes –**

- State Division of Community Services
- North Dakota Building Officials Association
- State fire marshal or local fire chief

### **Inspector training –**

- ND Building Officials Association
- International Conference of Building Officials

### **Model municipal ordinance for dangerous buildings –**

- North Dakota League of Cities

### **Owner(s) of the building (and recent title transfers) –**

- Local county Register of Deeds

### **Safety or health –**

- Local building inspector, local fire chief or state fire marshal
- Environmental health practitioners at local public health unit

### **State environmental rules, state Department of Health –**

- Surface or ground water contamination – Division of Water Quality
- Underground storage tanks for fuels, hazardous chemicals and rubble disposal – Division of Waste Management
- Asbestos (including licensed contractors and laboratories), lead-base paint and burning – Division of Air Quality

### **Chemical disposal –**

- Farm chemicals – state Agriculture Department
- Household chemicals and paints – city wide program (e.g., Minot and Fargo)

## Appendix: Summary of Relevant State Law

Summaries of elements of state law relevant to dangerous or unkept buildings are provided in the table below.

	<b>Nuisance Law NDCC §42</b>	<b>Public Health NDCC §23-35</b>	<b>City Ordinance NDCC §40-05</b>	<b>Fire Marshal NDCC §18-01</b>
Criteria	“Annoys, injures, or endangers the comfort, repose, health, or safety of others”	“necessary for the protection of public health to abate or remove any nuisance, source of filth, or cause of sickness”	Appropriate ordinances prohibiting “fire hazards”, “nuisances”, “unwholesome or nauseous places”, “buildings dangerous to the safety of the occupants or persons ... or ... in a dilapidated condition”	“building ... subject to fire ... and is so situated as to endanger other buildings or property”
Initiation	Attorney General, State Health Officer, State’s Attorney, Private Citizen	Local Public Health Unit	City building or code enforcement official	State Fire Marshal
Processes	Criminal Charge, Civil Action, Abatement by Public Entity, Injunction	Local Health Unit’s Order	Details in the ordinances	Fire Marshal’s order – civil court action for non-compliance
Funding	Court may order owner to pay costs and attorneys’ fees.	Costs must be assessed against the property.	Details in ordinances – generally, a charge against the property.	Owner to fund abatement and the same remedies available to a civil action may be used.
Pros	Broader selection of remedies, including the possibility of money damages and a civil judgment.	Simpler process and possibly most direct when dealing with health-related issues.	Can be simpler process if local ordinance provides a specific procedure.	Greatest power to force action.
Cons	More complex and time consuming, likely involving greater legal costs.	Costs most likely only collectable through property taxes, may result in property forfeiture.	Costs most likely only collectable through property taxes, may result in property forfeiture.	Fire Marshal generally looks to local ordinance enforcement in all but extreme cases.

## Appendix: Example Affidavit

### AFFIDAVIT IN SUPPORT OF ADMINISTRATIVE SEARCH WARRANT

\_\_\_\_\_, being duly sworn, states:

1. I am an inspector for the following political subdivisions and/or state agencies: \_\_\_\_\_  
\_\_\_\_\_.

2. The state or local laws or ordinances which I am responsible for enforcing are as follows:  
\_\_\_\_\_  
\_\_\_\_\_.

3. I am required to make investigations and inspections for the political subdivisions and/or state agencies described in paragraph 1 under the laws described in paragraph 2.

4. The building and property to be inspected is described as follows: \_\_\_\_\_  
\_\_\_\_\_.

5. The conditions, objects, activities, or circumstances which the search or inspection is intended to check or reveal are as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

6. The property to be searched or inspected is to be searched or inspected as a part of a legally authorized program of inspection which naturally includes that property for the following reasons:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

7. In addition or in the alternative, there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies a search or inspection of that property based upon the following facts and for the following reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

8. It may be necessary to move or remove building materials to inspect the above described property for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_.

Dated: \_\_\_\_\_ Inspector's signature: \_\_\_\_\_

Subscribed and sworn to before me by the above named inspector this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature of Judge or Magistrate: \_\_\_\_\_

**Appendix: Example Administrative Search Warrant**

STATE OF NORTH DAKOTA  
COUNTY OF \_\_\_\_\_

IN DISTRICT COURT  
JUDICIAL DISTRICT \_\_\_\_\_

ADMINISTRATIVE SEARCH WARRANT  
N.D.C.C. ch. 29-29.1

To the \_\_\_\_\_ and its inspectors and authorized agents:

Whereas application for an administrative search warrant was made by sworn affidavit or by sworn oral testimony before me by \_\_\_\_\_, an inspector and/or authorized agent of the \_\_\_\_\_, that he/she has reason to believe that on the premises known as \_\_\_\_\_

located in the city of \_\_\_\_\_, county of \_\_\_\_\_, state of North Dakota, *there is evidence of violation(s) of laws of the state of North Dakota and its political subdivisions*, including the following laws in particular: \_\_\_\_\_

and any rules and regulations adopted thereunder; and

Whereas \_\_\_\_\_ is the agency required by law to enforce such laws, rules, and regulations and to make investigations and inspections thereunder pursuant to (cite laws): \_\_\_\_\_

and related statutes, rules and regulations for the purpose of protecting public health, safety, and the environment; and

Whereas the conditions, objects, activities, or circumstances which the search or inspection is intended to check or reveal are as follows: \_\_\_\_\_

\_\_\_\_\_ ; and

Whereas I am satisfied that

( ) the property to be searched or inspected is to be searched or inspected as a part of a legally authorized program of inspection which naturally includes that property; and/or that

there is probable cause for believing that there is a condition, object, activity or circumstance which legally justifies such a search or inspection of that property;

YOU ARE HEREBY COMMANDED to search or inspect, within 24 hours after the date and time of this warrant's issuance, the premises described above for the conditions, objects, activities, or circumstances which the search or inspection is intended to check or reveal as specified above, serving this warrant and making this search or inspection

in the daytime (between the hours of 6 a.m. and 10 p.m.) U.S. v. Janze, 124 F.R.D. 86 FN6 (M.D.Pa. 1989)

at any time, day or night, for the following reasons: \_\_\_\_\_

\_\_\_\_\_.

If evidence of violations of the above laws, rules, or regulations is found, you are commanded to seize it, leaving a copy of this warrant and a receipt for any property seized, and prepare a written inventory of the property seized and properly secure the property and evidence and bring the receipt before me.

The inspector is hereby authorized to move and remove building materials necessary to search the aforementioned premises.

PURSUANT TO N.D.C.C. § 29-29.1-04, this warrant for search or inspection is valid for only twenty-four hours after its issuance, must be personally served upon an owner or possessor of the property, or upon any person present on the premises if an owner or possessor cannot reasonably be found between the hours of 8:00 a.m. and 8:00 p.m., and must be returned within forty-eight hours.

Given under my hand, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, at \_\_\_\_ o'clock \_\_.m.

BY THE COURT:

\_\_\_\_\_  
Judge or Magistrate of the District Court

## User 's Note Pad

[Enter notes for future reference here.] \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (etc.)