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|  <p style="text-align: center;"><b>Council<br/>Communication</b><br/>Office of the City Manager</p> | <b>Date:</b> January 10, 2011   |
|  | <b>Agenda Item No.</b> 35<br><b>Roll Call No.</b> <u>11-0040</u><br><b>Communication No.</b> <u>11-005</u><br><b>Submitted by:</b> Richard A. Clark, City Manager |

**AGENDA HEADING:**

Various actions regarding the Des Moines Building property at 405 6th Avenue and 513 Locust Street:

- Declaring the Des Moines Building at 405 6th Avenue and 513 Locust Street to be a public nuisance;
- Authorizing the Legal Department to pursue a court order for the abatement of such nuisance;
- Authorizing the Legal Department to pursue a court order declaring the building abandoned and related actions, as necessary, to transfer title.

**SYNOPSIS:**

The Roll Call on the Des Moines Building property provides for a number of related actions that will allow the City to take title to this downtown building located at a key intersection of the skywalk system.

1. Declaration of public nuisance and request to abate the nuisance:

The City of Des Moines obtained a court order to enter the property to restore heat to maintain operation of the fire protection sprinkler system. The City showed the Court there were significant Fire and Building Code violations within the Des Moines Building; these violations created an imminent threat to the public, neighboring properties, fire department personnel and the skywalk system, constituting an emergency requiring immediate abatement.

This action will affirm the public nuisance determination, provide authority for the City to undertake mitigation actions to provide for the continued operation of the fire sprinkler system and to assess the costs the City is incurring against the property.

2. Declaration of building abandonment for title purposes

The abandonment of the Des Moines Building property by various legal interests in the property has left the title in limbo with no party able to convey the property. Private developer interest in the property is greatly hindered by tangled and complicated legal issues relating to the property title.

This action will provide authority to the City Legal Department to pursue district court action to have the building declared abandoned and will grant the title that will allow the building to be sold for redevelopment.

**FISCAL IMPACT:**

Amount: Based on previous expenditures, it is anticipated these costs will be in the \$125-150,000 range. Actual bills have not been received, but will include work to turn heat on and on-going utility and

maintenance bills. It is anticipated that these costs will continue through the third quarter of 2011 at the earliest. All attempts will be made to reduce costs to a minimum.

Funding Source: Operating Budget, Economic Development Enterprise Account, SP746, CMO980717, page 56.

#### **ADDITIONAL INFORMATION:**

The Des Moines Building property consists of two buildings that interconnect. The larger 14-story building, constructed in 1930-1932, faces 6th Avenue, contains over 132,000 square feet of interior space and was formerly used for office and retail uses. The smaller 3-story building built in 1950, faces Locust Street, has about 17,000 square feet and was used primarily for offices. Both structures are currently vacant. The property tax assessment at its highest point in 1996 was \$5.8 million. It has declined about \$1.5 million and is expected to decrease with its reassessment in 2011.

In the past two years, several private developers have expressed interest in redeveloping the property for housing with commercial uses on the first two floors, but have been unable to successfully purchase the building due to title problems and dealing with the lienholders.

The Des Moines Building has been in the process of foreclosure for the past two years. The owners of record, Des Moines Tria Tower, LLC, originally represented by Alex Gershbeyn, Alex Shapiro and Anna Shapiro, all of Chicago, Illinois, have not made the mortgage or property tax payments and have been generally unavailable for service of legal notices. The bank which held the mortgage failed and the mortgage was acquired by PNC Bank, headquartered in Pittsburgh, Pennsylvania. PNC had a court-appointed receiver to provide maintenance services for the building and market the building for sale. The receiver stopped provision of those services and was dismissed by the court on December 8, 2010.

On December 9, 2010, the heating system to the Des Moines Building was turned off and ice began to accumulate in the plumbing and fire sprinkler system. The City Legal Department obtained an emergency court order on December 10, 2010, authorizing the City to immediately enter the Des Moines Building to provide adequate heat to prevent severe damage to the sprinkler system. Promptly upon issuance of the court order, City employees and representatives entered the building and began the repairs necessary to start the boiler. If the heating system had not been made operational that afternoon, the plumbing and fire sprinkler system would have been severely damaged. The continued maintenance of the sprinkler system and provision of sufficient heat to keep that system from freezing and breaking is essential for the safety of the Des Moines Building and those buildings physically connected to the Des Moines Building by the skywalk system.

Because the Des Moines Building is vacant and no other party with an interest in the building is willing and able to provide for the necessary maintenance to keep the building from being a fire hazard and public nuisance, it is appropriate at this time to pursue a district court judgment that the building has been abandoned by these entities and to award title to the City. The City has contacted the major lienholders to apprise them of the City's actions to-date and will continue to work with the lienholders for release of their interests to expedite obtaining the title.

**PREVIOUS COUNCIL ACTION(S): NONE**

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Legal Department to take various actions relating to declaration of property as public nuisance and to pursue title to the property for future mixed-use redevelopment. Office of Economic Development to work on an expedited process for the sale and redevelopment of the property.

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