

Model Eminent Domain Legislation

April 1, 2021

100.01 Public use. (a) Eminent domain shall be used only for a public use.

(b) "Public use" means exclusively:

- (1) the possession, occupation, ownership, and enjoyment of the land by the general public, or by a public agency;
- (2) the possession, occupation and ownership of land necessary for operations of a utility that serves the general public;
- (3) the remediation and reselling of a blighted property; or
- (4) the possession and reselling of an abandoned property.

(c) The public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not constitute a public use.

(d) Nothing in this section shall be construed to prohibit a taking of private property for a public use, as defined in (b)(1)-(4), because the public use provides ancillary economic benefits.

(e) When a government body or condemning authority approves a prospective or actual taking, the property owner has a right to have a court of competent jurisdiction determine if the taking is for a public use. The property owner may raise the requirement of public use as a defense or in a separate cause of action.

100.02 Blighted property. (a) "Blighted property" means a structure:

- (1) that was inspected by the appropriate local government and cited for one or more enforceable housing, maintenance, or building code violations that (a) affect the safety of the occupants or the public and (b) involve one or more of the following:
 1. a roof and roof framing element;
 2. support walls, beams, and headers;
 3. foundation, footings, and subgrade conditions;
 4. light and ventilation;
 5. fire protection, including egress;
 6. internal utilities, including electricity, gas, and water;
 7. flooring and flooring elements; or
 8. walls, insulation, and exterior envelope;

- (2) in which the cited housing, maintenance, or building code violations have not been remedied within a reasonable time after two notices to cure the noncompliance; and
 - (3) that the satisfaction of those enforceable, cited and uncured housing, maintenance, and building code violations cost more than 50 percent of the assessor's taxable market value for the building, excluding land value, for property taxes payable in the year in which the condemnation is commenced.
- (b) When a government body or condemning authority approves a prospective or actual taking, the property owner has a right to have a court of competent jurisdiction determine if the taking is to remediate blight and resell the property. The property owner may raise this section's required determination of blight as a defense or in a separate cause of action.

100.03 Abandoned property. (a) "Abandoned property" means property that:

- (1) has been substantially unoccupied or unused for any commercial or residential purpose for at least one year by a person with a legal or equitable right to occupy the property;
 - (2) has been cited for a violation of enforceable housing, maintenance, or building code that has not been remedied within 180 days after the citation; and
 - (3) for which property taxes have not been paid for at least two years.
- (c) When a government body or condemning authority approves a prospective or actual taking, the property owner has a right to have a court of competent jurisdiction determine if the taking is to possess and resell abandoned property. The property owner may raise this section's required determination of abandoned property as a defense or in a separate cause of action.

100.04 Necessity. (a) The government body or condemning authority bears the burden of proving by the preponderance of the evidence that:

- (1) the land, real estate, premises, or other property the condemning authority seeks to acquire is required for a public use;
- (2) the condemning authority has a plan that reflect a reasonable schedule to complete the public use after the condemning authority takes ownership of the property;
- (3) the condemning authority has access to funding to complete the public use; and
- (4) the public use cannot be accomplished by using or acquiring other property with the consent of the owner of the other property without an unreasonable increase in cost or delay.

(b) When a government body or condemning authority approves a prospective or actual taking, the property owner has a right to have a court of competent jurisdiction determine if the taking is necessary to accomplish the public use. The property owner may raise this section's required determination of necessity as a defense or in a separate cause of action.

100.05 Administrative warrant. (a) For the purposes of establishing the basis for the use of eminent domain for the remediation of a blighted property or possession of an abandoned property, a local government is authorized to seek from a judge or magistrate an administrative warrant to gain access to inspect a specific building.

(b) The local government must show probable cause that a code violation has occurred, the violation has not been cured, and the owner has denied the local government access to the specific building.

(c) Items of evidence that may support probable cause include recent fire or police inspections, exterior evidence of deterioration, or other similarly reliable evidence of present violations of the municipal code in the specific building.

100.06 Preemption. (a) Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, all condemning authorities, including home rule charter cities and all other political subdivisions of the state, must exercise the power of eminent domain in accordance with the provisions of this chapter, including all procedures, definitions, remedies, and limitations.

(b) Additional procedures, remedies, or limitations that do not deny or diminish the substantive and procedural rights and protections of property owners under this chapter may be provided by other law, ordinance, or charter.

OPTIONAL

100.07 Local government hearing requirements.

Subdivision 1. **Definitions.** For the purposes of this section:

- (1) "local government" means the elected government body of a statutory or home rule charter city, county, or township; and
- (2) "local government agency" means a subdivision, agency, authority, or other entity created by or whose members are appointed by the local government, including a port authority, economic development authority, housing and redevelopment authority, or other similar entity established under law.

Subd. 2. Required vote by local government. (a) If the taking is for the remediation of a blighted property or the possession of an abandoned property, a public hearing must be held before a local government or local government agency commences an eminent domain proceeding. The local government must notify each owner of property that may be acquired in writing by certified and regular mail of the public hearing on the proposed taking, post the public hearing information on the local government's website, and publish notice of the public hearing in a newspaper of general circulation in the local government's jurisdiction. Notice must be provided at least 30 days but not more than 60 days before the hearing.

(b) Any interested person must be allowed reasonable time to present relevant testimony at the public hearing. The proceedings of the hearing must be recorded and available to the public for review and comment at reasonable times and a reasonable place.

(c) At the next regular meeting of the local government that is at least 30 days after the public hearing, the local government must vote on the question of whether to authorize the local government or local government agency to use eminent domain to acquire the property.

For more information, please contact the Institute for Justice.

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