City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MJP-W

FROM: Laura A. Schaefer, Finance Director/City Clerk LAS

DATE: December 5, 2018

SUBJECT: Dangerous Building Appeal Hearing – 224 N Main Street

Tom Daniel, owner of the building at 224 N Main Street, has requested a hearing with the Council to appeal the order to abate a dangerous building located at 224 N Main Street in accordance with Chapter 145 of the City Code.

Attached are the following:

1. Dangerous Building Notice to Abate to Thomas L Daniel,
2. City Code Chapter 145, Dangerous Buildings, and
3. Appeal hearing request letter from Tom Daniel

At time of the hearing, other evidence may be presented.

RECOMMENDATION: Based upon evidence presented, Council discussion to uphold the order or reverse the order to abate the dangerous building located at 224 N Main Street.

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CITY OF CARROLL
DANGEROUS BUILDING NOTICE TO ABATE

October 26, 2018

TO: Thomas L Daniels
224 N Main St
Carroll, IA 51401

Re: Property at 224 N Main St, Carroll, Iowa 51401
Carroll County Parcel Number 06-25-203-002
Legal Description: Lot Nine (9) and the South Eleven (11) feet of the West Sixty-Eight (68) feet of Lot Ten (10), Block Thirty-Seven (37), Second Addition to Carroll, Carroll County, Iowa.

You are hereby notified to abate the public nuisance existing at 224 N Main St, Carroll, Iowa 51401 (Carroll County Parcel Number 06-25-203-002), 30 days from service of this notice. Your building(s) at the above location are considered dangerous building(s) in violation of the City of Carroll's Code of Ordnances, Chapter 145. A copy of this chapter is attached and made a part of this notice.

Based on observations made by the City of Carroll building officials and the State Fire Marshal's Office on May 19, 2011 and again on January 30, 2018, your building(s) are in violation as follows:

- Various inadequacies due to dilapidation, deterioration, or decay of the structure as defined by Carroll City Code section 145.03.1, specifically including but not limited to:
  - Interior finish of the building consists of wood paneling, exposed insulation, drywall and exposed wood beams and crumbling plaster.
  - The interior wood stairway leading to the 3rd floor is unstable; it appears to move with any weight placed on it.
  - There are numerous areas with exposed electrical wiring, outlets and switches with no covers and electrical components not secured.
  - There is an electrical panel located in the 2nd floor corridor with numerous exposed wires along with a series of exposed breakers.

- The exterior fire escapes from the 2nd floor appear to be very unsafe and unstable. There are some pieces of the platform that have come loose. A closer examination of these fire escapes was not made due to safety reasons. No determination has been made as to how much weight can safely be placed on these escapes.
- The wiring to the meters on the exterior of the building appears to be exposed to the weather. There is also exposed electrical wiring on the exterior of the building. Due to this, power to the main boarding house of the building(s) was cut off by Mid-American Energy in November of 2017 and still remains off.

- Manifestly Unsafe building for the purpose for which it is being used as defined by Carroll City Code section 145.03.2, specifically including but not limited to:
  - Numerous areas of the building revealed obstructed paths of egress with various items being stored in these paths.
  - The exit signs on the 2nd floor at the north and south ends of the corridor contain exposed electrical wiring. These exit signs are also tied into a light switch. No type of emergency battery back-up is tied into these exit signs. If power is lost, there will be no illuminated exit signs.
  - There is no battery back-up emergency lighting in any part of the building to illuminate a path of travel should power be lost.
  - The exit door at the north and south ends of the corridor on the 2nd floor have slide bolt locks on them and are labeled with the following signs: "Don't open if I close this door. Not for you to do. Thanks Manager" and "Don't open if I closed this door. For emergency use only. Manager"

- Fire hazard due to dilapidated condition, deterioration, damage, or other cause, as determined by the Fire Chief to be a fire hazard as defined by Carroll City Code section 145.03.4, specifically including but not limited to:
  - The distance between this building and the building to the north is approximately two feet. If a fire were to occur in this building, it could spread very quickly to the building to the north due to the close proximity. The north exterior siding has been removed leaving wood lath exposed on the north wall which increases the fire risk.
  - There is no separation between the main floor and the 2nd floor of the building to stop the spread of fire and/or smoke should a fire emergency occur. There is a door at the top of the 3rd floor but the rating of that door was not determined.
  - At last check, there were two single smoke detectors located in the corridor on the 2nd flood which are hanging open with no battery in them.

- A portion of the building(s) has been abandoned for a period in excess of six (6) months which constitutes such building or portion thereof an attractive nuisance or hazard to the public as defined by Carroll City Code section 145.03.5.
    - The main building has not been used since June of 2011, except illegally in the Fall of 2017 which was in violation of a written order of the Carroll Fire Safety Official. Additionally, power has been off since November of 2017 and no permit has been applied for to correct the issues that would permit power to be restored to the building.

The above nuisances are just a few of the visual observations that were made. In order to bring the entire building(s) up to code, a more thorough inspection would have to be performed on the entire structure(s) including all apartments, the 3rd floor, basement and personal residence since there is no separation of the two portions of the building(s), as well as a thorough examination of the fire escapes and all electrical components. All of the above stated deficiencies must be corrected and brought up to code in order to abate the public nuisance or the building(s) must be demolished and all demolition debris removed and legally disposed.

Failure to abate this public nuisance, on or before thirty (30) days from the date of service of this notice, shall result in the City of Carroll taking action to cause the abatement of the described nuisance, including demolition or any other legal action available to the City.

Prior to sending this notice, the City has attempted to work with you by sending several formal notices of our concerns via written letters, including June 23, 2011, November 22, 2017, December 27, 2017, and January 31, 2018 and having several informal meetings, including but not limited to, November 20, 2017, January 9, 2018, and in June of 2018. Even though the City has given you time over this past summer to correct the issues we have identified, you have made little to no progress to correct the identified nuisances. For this reason, the City is left with no choice but to declare the building(s) dangerous and seek the immediate abatement of the nuisance.

You may request a hearing with the City Council of Carroll as to whether the nuisance exists. Request for hearing must be in writing and the request must be delivered to the City Clerk during regular business hours, Monday through Friday, no later than thirty (30) days from service of this notice. If no hearing is requested it will be conclusively presumed that the nuisance exists and must be abated as demanded, including demolition. If a hearing is requested, the hearing will be before the Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and if a nuisance is found to exist, it shall be ordered abated as demanded, including demolition within a reasonable time under the circumstances.

If the nuisance is not abated as directed and no request for hearing is made within the time prescribed, the City of Carroll may abate the nuisance, assess the costs against the property, and collect in the same manner as general property taxes. Also, the City may elect to proceed with the institution of a municipal infraction or may take other legal action available to the City.

All costs incurred by the City may be charged to the owner of the property, and the City may take any other action deemed appropriate to recover the costs incurred, including but not limited to actions for a personal judgement.

If you have any questions you may contact Greg Schreck, Building Official with the City of Carroll at 712-792-1000.

Date of Notice: **October 26, 2018**

City of Carroll, Iowa

By: Greg Schreck
Greg Schreck, Building Official

CHAPTER 145

DANGEROUS BUILDINGS

145.01 Enforcement Officer
145.02 General Definition of Unsafe
145.03 Unsafe Building
145.04 Notice to Owner
145.05 Conduct of Hearing
145.06 Posting of Signs
145.07 Right to Demolish; Municipal Infraction
145.08 Costs

145.01 ENFORCEMENT OFFICER. The Building Official is responsible for the enforcement of this chapter.

145.02 GENERAL DEFINITION OF UNSAFE. All buildings or structures that are structurally unsafe or not provided with adequate egress, or that constitute a fire hazard, or are otherwise dangerous to human life, or that in relation to existing use constitute a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, are, for the purpose of this chapter, unsafe buildings. All such unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedure specified in this chapter.

(Code of Iowa, Sec. 657A.1 & 364.12[3a])

145.03 UNSAFE BUILDING. "Unsafe building" means any structure or mobile home meeting any or all of the following criteria:

1. Various Inadequacies. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay, or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

2. Manifestly Unsafe. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

3. Inadequate Maintenance. Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage, faulty construction, or otherwise, is determined by any health officer to be unsanitary, unfit for human habitation or in such condition that it is likely to cause sickness or disease.

4. Fire Hazard. Whenever any building or structure, because of dilapidated condition, deterioration, damage, or other cause, is determined by the Fire Marshal or Fire Chief to be a fire hazard.

5. Abandoned. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

145.04 NOTICE TO OWNER. The enforcement officer shall examine or cause to be examined every building or structure or portion thereof reported as dangerous or damaged and, if such is found to be an unsafe building as defined in this chapter, the enforcement

officer shall give to the owner of such building or structure written notice stating the defects thereof. This notice may require the owner or person in charge of the building or premises, within forty-eight (48) hours or such reasonable time as the circumstances require, to commence either the required repairs or improvements or demolition and removal of the building or structure or portions thereof, and all such work shall be completed within ninety (90) days from date of notice, unless otherwise stipulated by the enforcement officer. If necessary, such notice shall also require the building, structure, or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the enforcement officer.

(Code of Iowa, Sec. 364.12[3h])

1. Notice Served. Such notice shall be served by sending by certified mail to the owner of record, according to Section 364.12[3h] of the *Code of Iowa*, if the owner is found within the City limits. If the owner is not found within the City limits such service may be made upon the owner by registered mail or certified mail. The designated period within which said owner or person in charge is required to comply with the order of the enforcement officer shall begin as of the date the owner receives such notice.

2. Hearing. Such notice shall also advise the owner that he or she may request a hearing before the Council on the notice by filing a written request for hearing within the time provided in the notice.

145.05 CONDUCT OF HEARING. If requested, the Council shall conduct a hearing in accordance with the following:

1. Notice. The owner shall be served with written notice specifying the date, time and place of hearing.

2. Owner's Rights. At the hearing, the owner may appear and show cause why the alleged nuisance shall not be abated.

3. Determination. The Council shall make and record findings of fact and may issue such order as it deems appropriate.[†]

145.06 POSTING OF SIGNS. The enforcement officer shall cause to be posted at each entrance to such building a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. CITY OF CARROLL, IOWA." Such notice shall remain posted until the required demolition, removal or repairs are completed. Such notice shall not be removed without written permission of the enforcement officer and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

145.07 RIGHT TO DEMOLISH; MUNICIPAL INFRACTION. In case the owner fails, neglects, or refuses to comply with the notice to repair, rehabilitate, or to demolish and remove the building or structure or portion thereof, the Council may order the owner of the building prosecuted as a violator of the provisions of this chapter and may order the enforcement officer to proceed with the work specified in such notice. A statement of the cost

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[†] **EDITOR'S NOTE:** Suggested forms of notice and of a resolution and order of the Council for the administration of this chapter are provided in the APPENDIX to this Code of Ordinances. Caution is urged in the use of this procedure. We recommend you review the situation with your attorney before initiating procedures and follow his or her recommendation carefully.

of such work shall be transmitted to the Council. As an alternative to this action, the City may utilize the municipal infraction process to abate the nuisance.

(Code of Iowa, Sec. 364.12[3h])

145.08 COSTS. Costs incurred under Section 145.07 shall be paid out of the City treasury. Such costs shall be charged to the owner of the premises involved and levied as a special assessment against the land on which the building or structure is located, and shall be certified to the County Treasurer for collection in the manner provided for other taxes. In addition, the City may take any other action deemed appropriate to recover costs incurred.

(Code of Iowa, Sec. 364.12[3h])

November 19, 2018

Tom Daniel

224 N. Main St

Carroll, IA 51401

City of Carroll:

I am requesting a hearing with the City Council of Carroll concerning the property at 224 N. Main in Carroll, IA.

Sincerely,

Tom Daniel

Thomas L. Daniel

Rec'd 11/19/2018
@ 3pm las