No. 18-963

In the
Supreme Court of the United States

TERRENCE HILL,
Petitioner,
v.

CITY OF JACKSON, MICHIGAN, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT THE CITY OF JACKSON, MICHIGAN

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QUESTIONS PRESENTED

I. Contrary to Petitioner's assertion, the decision of the Sixth Circuit is consistent with this Court's precedents in *Mullane* and *Jones* which hold that prior to taking property, the Due Process Clause requires the government to provide the owner notice and an opportunity for a hearing appropriate to the nature of the case, but does not require actual notice. The City's Ordinance provided both notice and an opportunity for a hearing to the owner while also ensuring that potential subsequent buyers would receive notice of the property's condition prior to purchase. Petitioner purchased a home (located at 1010 Maple Avenue, in Jackson, Michigan) from the County of Jackson at a tax foreclosure auction. Prior to the auction, the City of Jackson conducted unopposed condemnation proceedings after giving notice to the County (the owner at the time). The City demolished the home a few months after the auction, and Petitioner sued as a result. The district court considered Petitioner's claim that the City allegedly failed to comply with the Due Process Clause and found that there was no genuine dispute as to any material fact. Petitioner now contends that the City should have done more – provide him pre-deprivation notice – before the demolition. Were the City's Ordinance provisions reasonably calculated to give notice to Petitioner and thus satisfy due process?

II. The Sixth Circuit's decision did not conflict with other Circuits where the Court affirmed the district court's decision based on *Parratt v. Taylor*: it was impracticable for the City to provide any pre-

deprivation remedy to Petitioner due to the County's unauthorized noncompliance with the City's ordinance (which required the County to inform a transferee of condemnation proceedings and obtain consent) and Petitioner failed to show that Michigan courts could not provide him an adequate post-deprivation remedy. When taking additional steps to provide notice is impracticable, and state-law remedies (both in tort and in contract) have not been shown to be inadequate, is a procedural due process claim precluded when the landowner fails to pursue state-law post-deprivation remedies?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the constitutional and statutory provisions identified in the Petition (**Pet., 2-3**), the following are also involved.

Mich. Comp. Laws § 125.540, provides:

> (1) Notwithstanding any other provision of this act, if a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building.
>
> (2) The notice shall be served on the owner, agent, or lessee that is registered with the enforcing agency under section 125. If an owner, agent, or lessee is not registered under section 125, the notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records.
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> (3) The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building. The person to whom the notice is directed shall have the opportunity to show cause at the hearing why the hearing officer should not order the building or structure to be demolished, otherwise made safe, or properly maintained.
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> (4) The hearing officer shall be appointed by the mayor, village president, or township supervisor to serve at his or her pleasure. The hearing

> officer shall be a person who has expertise in housing matters including, but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An employee of the enforcing agency shall not be appointed as hearing officer. The enforcing agency shall file a copy of the notice that the building or structure is a dangerous building with the hearing officer.
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> (5) The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice.

Michigan Constitution, Art. VI, § 28, provides in part:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and

> substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

City of Jackson, Michigan Code of Ordinances § 17-27 is available in the Appendix, *infra*, App.1-9.

COUNTERSTATEMENT

Petitioner Terrence Hill asserts that this Court should consider whether Respondent City of Jackson ("the City") violated his Fourteenth Amendment right to procedural due process when it demolished his structure on 1010 Maple Avenue. Contrary to Petitioner's contentions, the lower courts' decisions are in line with this Court's precedent and do not conflict with decisions from other Circuits. The record reveals that the City enacted ordinances to ensure notice and an opportunity to be heard before a property deprivation occurred. Despite the City's robust efforts, an unauthorized act by the County of Jackson ("the County") made any pre-deprivation remedy impracticable for the City. Additionally, Petitioner failed to show that Michigan courts could not possibly provide him a post-deprivation remedy. As a result, the City asks this Court to deny Petitioner's request for a writ of certiorari.

Petitioner's procedural due process claim challenges the City's condemnation procedures. The procedures are codified in City Ordinance § 17-27, and were enacted to deal with dangerous and unsafe structures that violated the City's building code. The first step of the procedure involves a City inspector investigating a

structure. If the inspector deems the structure dangerous and unsafe, notice is given to the landowner[1] to encourage repair, rehabilitation or, if necessary, demolition. City Ord. § 17-27(b). Once a Condemnation Notice is given, the ordinance prohibits the landowner from transferring the property without giving notice to the buyer. Additionally, landowners must obtain from the buyer (and file with the City) an "Affidavit of Disclosure" confirming that the buyer has notice of (and will fully accept and comply with) outstanding code violations. City Ord. § 17-27(l). If repairs are not made within the specified time, the ordinance permits the City to request a hearing with the Building Code Board of Examiners and Appeals (hereinafter "Building Board") to determine whether the Condemnation Notice should be upheld, modified or dismissed. City Ord. § 17-27(f). If upheld, the ordinance allows the City to bring the structure into compliance, including removing dangerous structures, following expiration of an appeal period. City Ord. § 17-27(f)(4), (g).

The condemnation at issue traces back to the County taking ownership of 1010 Maple Avenue in April 2011 "through tax foreclosure." (**App. A, 4a**). After foreclosure, the unoccupied home continued to fall into disrepair. Then on January 27, 2012, City inspectors visited the home and determined it was a dangerous structure. (**R. 27-4, Investigative Report, PageID.473-74**). On February 6, 2012, City personnel posted a Condemnation Notice on the property and

[1] Petitioner does not contest that the City provided the County with sufficient notice and an opportunity to contest the condemnation proceedings.

served a copy on the Jackson County Treasurer.[2] (**R. 27-7, Affidavit of Personal Service PageID.481**); (**R 27-8, Proof of Posting, PageID.483**). The City then recorded the Condemnation Notice with the Jackson County Register of Deeds on February 9, 2012.[3] (**R. 27-9, Filed Condemnation Notice, PageID.485**). Subsequently on May 17, 2012, after the City provided appropriate notices to the County of the Building Board's hearing, the Building Board held a hearing in accordance with the City's condemnation procedures.[4] (**R. 27-11, Board Order, PageID.490**). The County neither attended the hearing nor contested the Board's ruling upholding the Condemnation Notice. On May 21, 2012, the City served the Board's decision on the County. (**R. 27-13, Service of Order, PageID.494**). After the statutory appeal period expired, the City took steps toward demolishing the house. (**App. A, 5a**).

Petitioner became involved when, on August 22, 2012, he read a notice from the County Treasurer in

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[2] The County Treasurer essentially owned property on behalf of the County after the foreclosure pursuant to Michigan's General Property Tax Act. (**App. B, 29a**). Contrary to Petitioner's repeated assertions, the condemnation notice was not years old. (**Pet., i, 4**).

[3] Presented with numerous rundown properties in tax foreclosure due to the 2008 recession, the City and County entered into negotiations which would have permitted the City to purchase several properties, including 1010 Maple Avenue, from the County using the City's right of first refusal. Ultimately the parties could not reach an agreement and the condemnation proceedings advanced.

[4] This directly refutes Petitioner's claim that the City did not pursue condemnation and demolition proceedings until after the property had been transferred to the Petitioner. *See* (**Pet., 19**).

the local newspaper listing tax foreclosed properties for sale at auction. (**Pet., 5**). The publication warned potential bidders to confirm with the local units of government that there were no condemnation orders pending and to obtain permits before performing any repairs. (**App. A, 5a**). Although Petitioner asserts he visited the property prior to the auction, he did not perform a title search and did not contact the City to determine if 1010 Maple Avenue was condemned. (**R. 34-6, Hill Dep., p. 19, PageID.1265**).

The auction occurred on September 27, 2012. Due to the volume of homes located in the City which were being sold, City officials attended the tax auction (for the first time) to observe the County's process. (**R. 34-2, Burtch Dep., p. 93 PageID.1057**). Petitioner acknowledges that City officials believed that the County was required to disclose the condemnation status of properties prior to the sale. (**Pet., 7**).[5] City officials offered to assist the County in providing specific information regarding properties as they came up for auction, however, they were refused the opportunity. (**App. A, 23a**). Petitioner ultimately submitted a successful bid of $400.00 for 1010 Maple Avenue. (**App. A, 5a**).

That same day, Petitioner went to the City and spoke with a City employee to ask if the property he just purchased was on the City's demolition list. (**R. 34-6, Hill Dep., pp. 22-23, PageID.1266**). Hill was advised that the structure on the property had been condemned but that it had not been part of an

[5] City officials had no specific information regarding what each bidder, including the Petitioner knew at the time of the auction.

approved bid for demolition at that time.[6] (**R. 34-6, Hill Dep., pp. 23-24, PageID.1266**). As of September 27, 2012, the day of the tax sale, Hill was aware that the house on the property was condemned, no longer habitable and would be scheduled for demolition in the near future. Petitioner testified:

> I was told by the auctioneer to go see if your house is on the demolition list because the City was . . . tearing down a lot of houses.
>
> * * *
>
> From my understanding, she [the City employee] said at the present time this house is not on the demolition list, it hasn't been an approved bid for demolition, and to come back and check after you receive your title and deed.
>
> * * *
>
> She had said the house had been condemned, and I said I didn't know that.

(**R. 34-6, Hill Dep., pp. 23-24, PageID.1266**).

After Petitioner received a quitclaim deed from the County on October 1, 2012 he again went to the City in an attempt to obtain building permits. He was again informed that the house had been condemned and that

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[6] The dissent below mistakenly stated that Petitioner was not advised of the pending demolition until January 18, 2013 because Hill repeatedly claimed that he had no notice until three days prior to the demolition. (**App. A, 25a**). However, Hill's own testimony reveals that when he visited the City office on the day of the auction he learned of the City's intention (and plan) to demolish the structure on 1010 Maple Avenue. (**R. 34-6, Hill Dep., pp. 23-24, PageID.1266**).

building permits would not be issued. (**R. 34-6, Hill Dep., p. 27, PageID.1267**). He was advised that under limited circumstances, the City would allow owners of condemned properties to enter into rehabilitation agreements which required bringing the entire property up to code. (**R. 34-4, Donovan Dep., pp. 86-87, PageID.1159**). If not, the house would be demolished. (***Id.***). Petitioner did not pursue this option.

The City received confirmation on October 22, 2012 that all electric and gas facilities serving 1010 Maple Avenue had been discontinued. (**R. 27-16, Demolition Clearance, PageID.524**). Despite being aware of the condemnation status and the City's refusal to issue building permits, Petitioner had the electricity restored to the property. (**R. 34-6, Hill Dep., p. 32, PageID.1268**). Unaware that Petitioner restored electrical service, the City issued a demolition permit on January 2, 2013 requiring the contractor to complete demolition by July 1, 2013. (**R. 27-18, Demolition Permit, PageID.532**). When Petitioner discovered the electricity had again been disconnected, he went to the City for the third time on January 18, 2013, and was again informed that building permits would not be issued because the structure had been condemned. (**App. A, 6a**). The structure was demolished by the City contractor three days later on January 21, 2013.

On February 13, 2014, Petitioner commenced the present action in a Michigan court against the City and the County alleging (in relevant part) violations of procedural due process and sought relief pursuant to 42 U.S.C. § 1983. Due to the federal question Petitioner

presented, the City successfully sought removal to the United States District Court for the Eastern District of Michigan. After discovery, the district court granted summary judgment to the City (and County) on all of Petitioner's claims because "[t]he City demolished [his] house after according due process to the party entitled to it: the County." (**App. B, 38a**). The district court further held that the City's condemnation procedures adequately protected the rights of future purchasers by prohibiting the transfer of property subject to condemnation proceedings without furnishing the transferee with a copy of the Condemnation Notice. (**App. A, 8a-9a**).

Petitioner appealed to the United States Court of Appeals for the Sixth Circuit arguing that the City and County willfully chose not to disclose the condemnation and pending demolition prior to the auction in violation of his procedural due process rights. (**App. A, 8a**). The Sixth Circuit affirmed on alternative grounds by applying *Parratt v. Taylor*, 451 U.S. 527 (1981), and finding that Petitioner failed to plead and prove that there was no adequate post-deprivation state law remedy. (**App. A, 9a**). The majority opinion noted the real issue in the case was not the procedures used by the City to condemn and demolish the property; rather, the issue was the County's unauthorized and random failure to provide Hill notice of the condemnation: had the County followed the City's ordinance, Petitioner would have been able to assess whether he wanted to purchase the property in light of its condemnation status. (**App. A, 11a**). Judge White dissented in the application of *Parratt* because in her view the County's noncompliance with the notice provision was not

random and it was neither impossible nor impractical for the City was aware the County had a policy of ignoring the notice requirements. (**App. A, 20a-22a**). This petition followed.

REASONS FOR DENYING THE PETITION

The district court properly granted summary judgment to the City on Plaintiff's procedural due process claim using a conventional due process analysis, rather than *Parratt*. *See* (**App. C, 41a-42a**) (citing **App. B, 28a-40a**). Nonetheless, whether applying a conventional analysis or the *Parratt* doctrine, the decisions below do not conflict with decisions of this Court or any Court of Appeals, but rather follow precedent in this well-settled area of constitutional law. Accordingly, Petitioner has not carried his burden of demonstrating any "compelling reason" for the Petition to be granted. *See* Sup. Ct. R. 10.

I. Due Process Does Not Require Actual Notice

The Fourteenth Amendment to the U.S. Constitution provides "[n]o state shall . . . deprive any person of life, liberty or property, without due process of law." U.S. Const. Amend. XIV. "Before a State may take property . . . the Due Process Clause . . . requires the government to provide the owner 'notice and opportunity for a hearing appropriate to the nature of the case.'" *Jones v. Flowers,* 574 U.S. 220, 223 (2006) (citing *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313 (1950)). Due process does not, however, require actual notice of the proceedings.

Dusenbery v. United States, 534 U.S. 161, 170 (2002). Instead, the government may use any method of providing notice that is "reasonably certain to inform those affected." *Mullane*, 339 U.S. at 315. "Now and then an extraordinary case may turn up, but constitutional law, like other mortal contrivances, has to take some chances, and in the great majority of instances, no doubt, justice will be done." *Id.* at 319 (quoting *Blinn v. Nelson*, 222 U.S. 1, 7 (1911)).

For instance, in *Mullane,* this Court considered whether New York's practice of only providing notice by publication was sufficient to advise a common trust fund's beneficiaries of a judicial settlement (*i.e.*, a termination of the beneficiaries' rights to the fund). 339 U.S. at 311. This Court balanced the state's interest in reaching a final settlement and the individual's interests in their property. The Court held that "notice, reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" was required. *Id.* at 314. The key focus was on the "reasonableness" of the means chosen by the state. *Id*. at 315. The "reasonably calculated" standard became the benchmark for notice and gave states discretion to adopt forms of service that balanced the "interest of the state with the individual interest sought to be protected by the Fourteenth Amendment." *Id.* at 315.

Here, the Michigan statute (Mich. Comp. Laws § 125.540) and the City Ordinance on which it was based provided multiple means of giving notice that were reasonably calculated to provide notice to

interested parties. The state statute and City Ordinance mandate notice by mail, in addition to posting on the property. City Ord. § 17-27(c)(1). Indeed, the owner of the property, the County, received notice and did not contest the City's determination that the structure on 1010 Maple Avenue was dangerous enough to condemn and demolish. The City's Ordinance also ensured that potential subsequent purchasers would receive notice regarding the dangerous condition of property prior to purchase by requiring the seller to inform the transferee. City Ord. § 17-27; *see Dusenbery,* 534 U.S. at 170. The state statute and the City Ordinance provided methods "reasonably calculated" to give notice to the interested party, Petitioner, and therefore satisfy due process requirements.

a. The City's Procedural Safeguards Provided Adequate Notice to the Owner at the Time of Condemnation Proceedings

The City provided ample notice and opportunity to be heard in accord with the provisions of the City's Ordinance and with Mich. Comp. Laws § 125.540, the state statute on which the Ordinance was based.[7] Chapter 17 of the Jackson City Code contains building code regulations including City condemnation procedures. The regulations are enforced by the Inspection Division of the City's Department of Neighborhood and Economic Operations ("NEO") and

[7] In the courts below, the City argued that at the time the City undertook condemnation proceedings at 1010 Maple Avenue, Mr. Hill had no protected property interest because the owner of the property during that time was Jackson County. The Sixth Circuit did not squarely address that argument. *See* (**App. A, 9a-9a, 12a**).

require notice to the property owner and an opportunity for a hearing before action is taken.

The NEO is required to examine any structure it believes to be unsafe and if found to be a dangerous building "the division shall commence proceedings to cause its repair, rehabilitation or demolition." City Ord. § 17-27(b). If a structure is determined to meet the definition of a dangerous structure, a Notice and Order requiring repair, rehabilitation or demolishing the structure is served on the property owner and notice is posted on the structure. City Ord. § 17-27(c)(1). The Notice and Order advises the property owner that the property cannot be transferred without giving notice to a subsequent buyer and filing an Affidavit of Disclosure with the City confirming the new owner has been advised and will accept and comply with outstanding code violations. *Id.*

If the required repairs are not made in the time specified in the Notice and Order, the City may request the Building Code Board of Examiners and Appeals ("Building Board") to conduct a hearing to determine whether the Notice and Order should be upheld. City Ord. § 17-27(f)(1). A complaint is drafted outlining the inspector's findings and a hearing is requested. The notice of the Building Board hearing along with a copy of Complaint and Notice of Hearing is served on the property owner of record prior to the hearing and recorded with the Jackson County Register of Deeds. City Ord. § 17-27(f)(2).

The Building Board has authority to uphold the Notice and Order, modify it or dismiss it. City Ord. § 17-27(f)(3). If the Board upholds the Notice and

Order, the building inspection division must record the decision with the Jackson County Register of Deeds. City Ord. § 17-27(d)(2). The NEO Building Inspection Division is authorized to take action to bring the structure into compliance which includes removing any and all dangerous structures following expiration of an appeal period if authorized by the Building Board. City Ord. § 17-27(f)(4), (g)).

Here, the City took reasonable steps to provide notice, but those notices went to the owner of the property, Jackson County, not to the unknown subsequent purchaser, Petitioner. The City notified Jackson County of the Notice of Dangerous Structure/Condemnation and of the Notice of Hearing of the Board of Examiners by mail. (**R. 27-7, Affidavit of Personal Service PageID.481**); (**R 27-8, Proof of Posting, PageID.483**). Eventually, the Board of Examiners upheld the Notice of Condemnation pursuant to City Ordinance § 17-27(f)(3)(a). (**R. 27-11, Board Order, PageID.490**). However, only the condemnation was subsequently recorded with the Registrar of Deeds as required by the Ordinance. Through an oversight, the Board's decision was not filed with the Registrar. Nonetheless, the steps taken to provide process to subsequent transferees, who had not yet acquired any ownership rights to the properties at the time the properties were condemned, established the reasonable efforts made by the City to comply with due process.

b. Petitioner Received Actual Notice

Petitioner's argument rests on the premise that because he did not receive actual notice, although the County did, there was no attempt to provide notice to him and his due process rights were therefore violated.[8] However, Petitioner actually knew about the condemnation and potential demolition of the house upon purchasing the property on September 27, 2012 at the County tax sale. After the purchase, Petitioner contacted the City to determine if the property was on the demolition list. City officials confirmed that the house was condemned but was not yet part of an approved bid for demolition at that time. (**R. 34-6, Hill Dep., pp. 23-24, PageID.1266**). Therefore, Petitioner had actual notice, long before the demolition took place on January 21, 2013, that the property was condemned and would be demolished in the future.

The City provided additional notice to Hill when he received a quitclaim deed from the County on October 1, 2012. That day, he spoke to a City building official who repeated that the property was condemned and no building permits would be issued. (**R. 34-6, Hill Dep., p. 27 PageID.1267**). Petitioner was advised that in limited circumstances, an owner of a condemned property could enter into a rehabilitation contract to bring the entire property up to code, but he did not pursue that option. (**R. 34-4, Donovan Dep., pp. 86-87, PageID.1159**). He was on notice that he could not legally use or repair the house, which was in dangerous

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[8] In fact, Petitioner received actual notice from the City. *See* (**R. 34-6, Hill Dep., pp. 23-24, PageID.1266**).

condition as determined earlier by City inspectors, until it was code compliant.

On October 22, 2012 the utilities were turned off by the City and on December 19, 2012, asbestos abatement was completed. From September 27, 2012 until January 18, 2013 when Hill went to the City a third time, he took no action to "address the City's apparent concerns" and bring the property up to code and made no attempt to obtain legal redress, despite his knowledge of the condemnation and pending demolition. The building had not yet been demolished and Petitioner had an extended opportunity to take action before his rights were finally extinguished by the demolition on January 21, 2013, but failed to do so.[9]

c. The City took Further Reasonable Steps through the Ordinance

Even if Petitioner did not receive notice, the City's efforts were not constitutionally insufficient simply because an interested party did not actually receive that notice prior to state action. *See Dusenbery*, 534 U.S. at 170 n.4 (internal citations omitted). Nonetheless, Petitioner asserts that the question in *Jones v. Flowers* is similar to the questions presented to the Court herein. *Jones* addressed the issue of whether due process entails further responsibilities

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[9] The dissent states the City did not inform the Petitioner of the City's demolition order until January 18, 2013, and even then without a date, although the City was aware of notice problems and that Hill had attempted to obtain building permits. (**App. A, 25a**). Hill's testimony confirms that he was aware of the condemnation and pending demolition months earlier. (**R. 34, Hill Dep., pp. 23-24, PageID.1266**).

when the government becomes aware, prior to the taking, that its attempt at notice has failed. *Jones*, 574 U.S. at 227. The government's knowledge is a "circumstance and condition that varies the notice required . . . assessing the adequacy of a particular form of notice requires balancing 'the interest of the state against the individual interest sought to be protected by the Fourteenth Amendment.'" *Id.* at 229 (quoting *Mullane*, 339 U.S. at 314). While the rule in *Jones* applies here, the facts are distinguishable and lead to a different result.

Jones' property was declared delinquent after he failed to pay property taxes. *Id.* at 223. Two certified letters mailed to the property address by the Arkansas Commissioner of State Lands informing Jones of the delinquency were returned "unclaimed." *Id.* at 223-224. After a Notice of Public Sale was published in a local paper, the house was sold. *Jones*, 574 U.S. at 224. Jones sued, arguing that the state failed to provide adequate notice and violated his due process rights. *Id.* at 224. The trial court rejected the claim and the appellate court affirmed. After granting certiorari, this Court held that "when the government learns its attempt at notice has failed, due process requires the government to do something more before real property may be sold." *Id.* at 227. Since the government knew Jones did not receive the letters (which were returned unopened), this Court determined that the state should have taken additional reasonable steps to notify Jones, if practicable to do so. If there were reasonable steps available to take, like sending notice by regular mail or posting notice on the front door, then the Commissioner was required to take them. *Id.* at 234-35.

Importantly, *Jones* does not require an open-ended search. *Id.* at 236. *Dusenbery* also confirms that "heroic efforts" are not required. 534 U.S. at 170. While Petitioner claims that the City failed to provide him with actual notice and opportunity to challenge the City's demolition notice, the City provided more than adequate constitutional protection – notwithstanding the fact that the County was the owner of the property at the time it was condemned, not the Petitioner, a subsequent purchaser. Petitioner cannot seek to extend *Jones* beyond its own limits.

Here, in addition to the extensive procedural safeguards provided to the owner of the property (the County), the City also took steps through its Ordinance to notify potential subsequent purchasers of dangerous property conditions prior to purchase. The Ordinance states:

> It shall be unlawful for the owner of any building or structure alleged to be dangerous who has received a notice and order, or upon whom a notice and order has been served pursuant to subsection (c)(2) of this section, to sell, transfer, or otherwise dispose of or to another until . . . such owner shall first furnish the grantee or transferee a true copy of said notice and order issued by the building official, and shall furnish to the building official a signed and notarized statement from the grantee or transferee acknowledging the receipt of such notice and order, and fully accepting the responsibility, without condition, for making the required repairs, rehabilitation, or demolition to

> the alleged dangerous building or structure as required by such notice or order.

City Ord. § 17-27. The express purpose of this section was to ensure that even a potential purchaser would receive notice of dangerous conditions prior to purchase, and could act accordingly. The County's failure to comply with the disclosure provision nullified this protection.

Neither the district court nor the Court of Appeals majority found any shortcomings with the City's procedure regarding notice and opportunity for a hearing prior to condemnation and demolition of a dangerous building. The failure to provide due process fell squarely on the County. As the district court noted:

> [T]he real issue in the present case is not the procedures that the City used to condemn and demolish [Hill]'s property; rather, the issue is the County's alleged failure to provide [Hill] notice of, and obtain [his] acknowledgment of, the condemnation order. Under the circumstances present, the County's alleged failure undermined the framework designed to ensure that prospective buyers are aware of and comply with condemnation notices.

See (**App. A, 11a**).

The Court of Appeals majority agreed: The County's failure to comply "undermined otherwise robust procedures insuring adequate notice of condemnation to purchasers. The 'established [City] procedure' itself was not flawed – instead, the County prevented the correct operation of these procedures by its violation of

the disclosure ordinance." (**App. A, 10a**). As the Court reasoned:

> The City employs comprehensive procedures for condemnation and demolition actions – providing notice and [an] opportunity [to] appear and present evidence at a hearing before the Building Code Board of Examiners – and this process was afforded the County, who was the owner of the Property at the time of condemnation. The City's procedures likewise insure that owners are not able to offload such condemned properties to unwitting buyers by mandating an affidavit of disclosure before a transfer in ownership. *See* Jackson City Code Section 17-27(l). Had the County followed this ordinance, then Hill would have been able to assess whether it was worthwhile to acquire the Property in light of the condemnation and could have purchased (or declined to purchase) it with the knowledge that the structure on it was condemned.

(**App. A, 11a**).

Unlike the government in *Jones*, the City took additional reasonable steps through the Ordinance to provide notice to potential buyers. While *Jones* involved a very different set of facts, this Court's holding there supports the decision below.

d. Petitioner Identifies No Error with the District Court's Decision

Under the *Mullane* test of reasonableness under the circumstances, Petitioner's due process rights were not impaired by the City's process for providing notice and hearing. The balancing test outlined in *Mathews v. Eldridge,* 424 U.S. 319, 334-35 (1976) offers further support for the City's action and suggests that the requirements of due process are fluid and fact dependent. *Mathews* considers several factors to determine exactly how much process is due including:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335.

Applying the *Mathews* balancing test confirms the adequacy of the process provided by the City. First, the interest affected by the demolition was significant, but Petitioner retained his interest in the Property as a title holder, which was a substantial interest. Moreover, Hill's potential liability in the dangerous and unsafe building had been eliminated when it was removed from the Property.

Second, the risk of an erroneous deprivation was low. The City's Ordinance provided for pre-termination procedures including notice to owners (through mailing and posting on the Property) and an opportunity to contest the City's determination regarding the need for condemnation through a hearing before the Board of Examiners. The Ordinance afforded additional due process protection to potential transferees of an owner by requiring disclosure of the condition of the Property to potential buyers and obtaining a signed and notarized statement from the transferee acknowledging receipt of the notice and accepting responsibility for making repairs, rehabilitation or demolition of the dangerous structure. City Ord. § 17-27.

Third, additional opportunities for review of administrative decisions, beyond Respondent's pre-deprivation procedures, were afforded through the Ordinance (City Ord. § 17-27(d)(2)) as well as Article VI § 28 of the Michigan Constitution, which provides for direct review of "[A]ll final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses[.]"

Fourth, the probable value of additional or substitute procedural safeguards would be minor. Occasionally an erroneous administrative decision could occur, "[b]ut the procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases, not the rare exceptions." *Mathews,* 424 U.S. at 344. The process worked as it was intended to in this case and

would have been successful but for the County's failure to disclose the condition of the Property to the Petitioner as required by City Ordinance.

Lastly, the administrative burdens that additional procedural requirements would entail would be burdensome to the City which had already addressed the issue of notice to subsequent transferees through its Ordinance. The method chosen by the City worked. The government is not constitutionally obligated to seek alternative means of notice when a generally reasonable notice procedure fails in a particular situation, unless there is something to alert it that the notice was not received. *Jones*, 574 U.S. at 234-235; *Dusenbery*, 534 U.S. at 170.

Taken together, whether analyzed pursuant to *Mullane* or *Mathews*, the conclusion is the same – Petitioner received notice reasonably calculated to apprise him of the pendency of the condemnation proceedings and an opportunity to present objections. *Mullane,* 339 U.S. at 315.

II. The Sixth Circuit Correctly Applied the *Parratt* Doctrine

Petitioner claims the lower court's decision incorrectly applied *Parratt* "because it sweeps too broadly[,]" and contends the Sixth Circuit is in conflict with other Circuits. *See* (**Pet., 23-24**). However, there is neither an error nor a conflict. In fact, Petitioner's references actually support the Sixth Circuit's decision. As a result, this Court should deny Petitioner's request for a writ and grant all other relief in favor of the City that is just and equitable.

a. The Decision Below does not Conflict with other Circuits

Petitioner's perplexing reference to *Archbold-Garret v. New Orleans City*, 893 F.3d 318 (5th Cir. 2018) – which never mentions *Parratt* – does not support his argument regarding a conflict among the Circuits. (**Pet., 24**). In *Archbold-Garrett*, the plaintiffs brought a Fifth Amendment takings claim along with a procedural due process claim after the city demolished a building on property the plaintiffs purchased from the city in 2015. The city had previously acquired ownership in 1998 due to the prior owner (Jett) failing to pay taxes. *Id*. at 320-21. The city pursued code enforcement violations against Jett and entered a judicial lien against him. When the lien went unpaid, the city pursued demolition. After learning of the impending demolition, plaintiffs convinced the city to cancel the lien. *Id*. Nonetheless, the city demolished the property two days later without warning. *Id*. at 321.

The trial court dismissed plaintiffs' procedural due process claim as unripe because they had not sought an inverse condemnation claim in state court before raising their federal claims. The Fifth Circuit reversed and held that the procedural due process claim was ripe because (1) it sought a different remedy and asserted different injuries than the takings claim; and (2) Louisiana's inverse condemnation cause of action failed to provide an adequate post-deprivation remedy. *Archbold-Garret*, 893 F.3d 324. Ultimately, the Fifth Circuit concluded that the unripe takings claim could be adjudicated along with the ripe procedural due process claim in the interest of fairness and judicial

economy because *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1995) was "merely prudential, not jurisdictional." *Archbold-Garret*, 893 F.3d at 324-25 (citation and quotation omitted).

Archbold-Garret does not suggest a different result here. As explained by the Sixth Circuit, *Parratt* bars procedural due process claims when "the state provides an adequate postdeprivation remedy and (1) the deprivation was unpredictable or random; (2) predeprivation process was impossible or impracticable; and (3) the state actor was not authorized to take the action that deprived the plaintiff of property or liberty." *Daily Servs. LLC v. Valentino*, 756 F.3d 893, 907 (6th Cir. 2014) (internal citations and quotation marks omitted). Petitioner failed to refute the fact that Michigan's post-deprivation remedies were available and adequate to satisfy due process and therefore *Archbold-Garret* is unhelpful to him here.

Petitioner then quotes *Wilson v. Civil Town of Clayton, Ind.*, 839 F.2d 375 (7th Cir. 1988) to suggest that the Sixth Circuit's decision below bars all procedural due process claims where there is an available state-law tort claim. (**Pet., 24**). Contrary to Petitioner's assertion, the lower court's decision, like *Daily Servs.*, only bars a procedural due process claim when (amongst other things) "pre-deprivation procedures are simply impracticable[.]" *Walsh v. Cuyahoga Cty.*, 424 F.3d 510, 513 (6th Cir. 2005) . This position is in unity with *Wilson* because it "confine[s] *Parratt* to cases where it is not feasible for the state to

provide a hearing before the deprivation occurs." *Wilson*, 893 F.3d at 380 (citing *Tavarez v. O'Malley*, 826 F.2d 671, 675 (7th Cir. 1987)).

Undeterred, Petitioner argues that *Parratt* should never apply to homes – instead suggesting that it should only apply to deprivations of "common commercial good[s], easily replaced in the marketplace." (**Pet., 25**). However, the Fourteenth Amendment protects *all* "life, liberty, and property" regardless of value or uniqueness. U.S. Const. Amend. XIV, § 1. As a result, *Parratt* and its progeny do not consider the type of property at issue when analyzing the impracticability of pre-deprivation process "no matter how significant the private interest at stake and the risk of its erroneous deprivation." *See Zinermon v. Burch*, 494 U.S. 113, 129 (1990) (internal citation omitted).

b. Pre-deprivation Process was Impracticable

Regarding the impracticability of pre-deprivation process, Petitioner argues the City should have conducted a hearing before the demolition. (**Pet., 24**). This ignores the fact that (1) the City *did* conduct a hearing; and (2) the then-owner (the County) did not oppose the hearing's outcome. (**App. A, 5a, 11a-12a**). Petitioner goes on to assert that "the pre-auction demolition notices . . . did not run with the land[.]" (**Pet., 26**). Yet, as the lower court correctly noted, notice of the City's intention to condemn the property was "publicly filed with the Jackson County Register of Deeds." (**App. A, 4a**). Since the City's ordinances went above and beyond what due process requires, it would

be impracticable to require the City to do anything more before Petitioner's deprivation occurred.

Petitioner seems to suggest that providing actual notice before a deprivation occurs is a practical solution. *Cf. Dusenbery*, 534 U.S. at 170. However, requiring the City to constantly search for new buyers of County property (and then inform them of condemnation proceedings) is akin to requiring municipalities to endlessly search the phonebook for updated contact information before taking property. "An open-ended search for a new [buyer] – especially when the [City] obligates the [County] to" give notice to new buyers of condemnation proceedings – "imposes burdens on the [City] significantly greater than" what the Constitution requires. *Jones*, 547 U.S. at 236. Since the City's Ordinance more than satisfied due process, requiring anything more would amount to requiring actual notice. Since requiring actual notice is impracticable, the Sixth Circuit correctly applied *Parratt*.

c. The Deprivation was Unpredictable

Petitioner contends the alleged "deprivation was predictable" (**Pet., 26**) and relies on *Piatt v. MacDougall*, 773 F.2d 1032 (9th Cir. 1985) (en banc) in support. However, *Piatt* is involved a prisoner's allegation that a prison director routinely failed to compensate prisoners for work performed, contrary to state law. *Piatt*, 773 F.2d at 1036. *Parratt* was not applicable there because a governmental policy of denying wages to prisoners predictably led to property deprivations. Naturally, the Ninth Circuit remanded the case to determine the extent to which the

government had denied wages owed to prisoners. *Id*. at 1036-37.

Petitioner also advances *DiLuzio v. Vill. Of Yorkville, Ohio*, 796 F.3d 604 (6th Cir. 2015) to support his arguments. There, a mayor secretly sought to force a landowner to sell his property by demolishing it, and lied as a pretext to complete his plan before the landowner could pursue pre-deprivation remedies. *Id*. at 613-14. The landowner "produced admissible evidence" showing that the mayor "acted in bad faith, that there was actually no emergency condition or necessity for quick action, and that nothing prevented the [government] from providing pre-deprivation process." *Id*. at 613-14. Accordingly, the Sixth Circuit affirmed the trial court's denial of the mayor's summary judgment motion.

Piatt and *DiLuzio* are distinguishable here because the County's unauthorized noncompliance with the City ordinance was not predictable. There is no evidence of the City enacting the relevant ordinances with the presumption that the County would ignore them. In fact, as the lower court correctly noted, "the County prevented the correct operation of these procedures by its violation of the disclosure ordinance." (**App. A, 10a**). Since the City (and its personnel) expected the County to notify buyers of condemnation proceedings, it was not predictable that Petitioner would suffer a deprivation.

Even if the County's noncompliance was predictable, no City policy made Petitioner's deprivation predictable. First, there is no evidence of a "clear and consistent pattern of" City personnel turning

a blind eye to the County's acts or omissions. *Doe v. Claiborne Cty.*, 103 F.3d 495, 508 (6th Cir. 1996) (citing *City of Canton v. Harris*, 489 U.S. 378, 388-89 (1989)). Additionally, even assuming that the City had constructive (or actual) notice of ordinance noncompliance by the County, there is no evidence of the City tacitly approving the County's alleged omission(s). *Id*. Instead, the record reveals that City personnel at the auction were stopped by County personnel when they tried to address the audience regarding condemnation. *See, e.g.*, (**App. A, 22a-25a**). Since the City did not have a custom of ignoring the County's noncompliance, it was not predictable that a deprivation would occur.

Likewise, the City did not have a custom or policy of failing to file Board decisions with the Register of Deeds. There is no evidence to suggest a pattern of City personnel failing to comply with the Ordinance. *Doe*, 103 F.3d at 508. Instead, the evidence suggests this shortcoming was random. The City sent notice of the Board's decision to the County Treasurer. (**R. 27-13, Service of Order, PageID.494**). Even if there was proof a pattern, there is neither evidence of the City being on notice of it nor evidence of the City tacitly approving it. *Doe*, 103 F.3d at 508. Thus, it was not predictable that a deprivation would occur.

d. Unauthorized Acts Caused the Deprivation

The Sixth Circuit appropriately applied *Parratt* because unauthorized acts caused the alleged deprivation. First, the County's failure to give notice to Petitioner of the condemnation when the sale occurred

was unauthorized because the failure to give notice violated the City's ordinance. Petitioner disagrees, but offers no evidence to support his contention. (**Pet., 26**). As the trial court noted, there is no evidence showing that the County "is immune from the disclosure requirements[.]" (**App. B, 35a**). Since the County is not immune from the Ordinance, noncompliance was unauthorized.

Second, the failure to record the Board's order upholding the condemnation was unauthorized. Petitioner makes only conclusory arguments to the contrary and relies on Judge White's dissent below. *See* (**App. A, 22a**). The dissent concluded that even if the Petitioner had gone to the Registrar or Deeds, he would not have learned of the property's demolition and further concluded that the City's behavior in failing to record this order made the City's other procedures insufficient to protect Petitioner's due process rights. (***Id.*, 22a, 25a-26a**). However, as the dissent noted, the Ordinance required recording of Board decisions. (**App. A, 22a**). Thus, the noncompliance was unauthorized.

Petitioner likens the situation here to the facts in *Wilson*. There, the Seventh Circuit found *Parratt* inapplicable because the town trustees' efforts to cause an eviction were neither random nor unauthorized. Instead, their actions amounted to official policy (*i.e.*, they were policymakers with final decision-making authority) which was the moving force behind the alleged deprivation. *Wilson*, 893 F.3d at 380. But here, unlike the acts at issue in *Wilson*, *Piatt*, and *DiLuzio*, the City never condoned any Ordinance violation. *See*

(**Pet., 3**). Thus, any failure to comply with the Ordinance was unauthorized.

e. Michigan Courts Provide Adequate Post-Deprivation Remedies

Petitioner argues that any "post-deprivation tort claim is constitutionally deficient." (**Pet., 24**). However, Petitioner's conclusory assertion is contradicted by *Hudson v. Palmer*, 468 U.S. 517, 535 (1984) ("that Palmer might not be able to recover under [state-law] remedies the full amount which he might receive in a § 1983 action is not, as we have said, determinative of the adequacy of the state remedies.") (internal citation omitted). Petitioner failed to rebut the fact that post-deprivation remedies available in Michigan's courts were adequate to satisfy Petitioner's due process rights. *See* (**App. A, 13a-14a**); (**App. B, 33a**). As a result, the Sixth Circuit appropriately applied *Parratt* and affirmed summary judgment in favor the City.

In considering whether state-law tort remedies were available to Petitioner, the Sixth Circuit referred to the district court's analysis concluding that the County was not "immune from the notification [disclosure] obligations of City Ordinance § 17-27(l)[.]" (**App. A, 13a**) (citing **R. 64, Amend. Order, PageID.2622-26**). Nothing barred a suit brought by a private party arising out of the failure to disclose in violation of the Ordinance. (**App. A, 13a**) (citing **R. 64, Amend. Order, PageID.2623-24**). Thus, Petitioner failed to show that a state-law tort remedy was deficient.

Petitioner also failed to show that contract remedies, in addition to tort remedies, were

insufficient. Under Michigan law, the failure to disclose what is undeniably a material fact could constitute fraudulent concealment, entitling the aggrieved party to legal and/or equitable remedies – including rescission. *See, e.g.*, *Titan Ins. Co. v. Hyten,* 491 Mich. 547, 555, 817 N.W.2d 562, 567-68 (Mich. 2012) (internal citation omitted). Thus, if the County failed to disclose the condemnation proceeding (with demolition to follow) to Petitioner prior to transferring 1010 Maple Avenue by quitclaim deed, rescission was a post-deprivation remedy available to Petitioner in Michigan courts. *See Bornegesser v. Winfree*, 329 Mich. 528, 533-534, 46 N.W.2d 366, 368-69 (Mich. 1951) .

All the elements of fraudulent concealment are met here. *See Tompkins v. Hollister*, 60 Mich. 470, 483, 27 N.W. 651, 655 (Mich. 1886) (citations omitted); *United States Fidelity & Guaranty Co. v. Black*, 412 Mich. 99, 125, 13 N.W.2d 77, 88 (Mich. 1981). First, as a seller, the County had a legal duty under the City's ordinance to disclose the existence of condemnation proceedings against the property to the buyer and obtain the buyer's consent. Second, there can be no serious dispute that the County intentionally withheld condemnation information from Mr. Hill. The County failed to comply with its duty to disclose under the Ordinance and prevented City personnel from advising those at the auction that some properties were subject to condemnation proceedings. Finally, suppressing this information was just as prejudicial to Mr. Hill as falsely asserting that the property was not subject to any condemnation proceedings at all. As Mr. Hill stated, he "expected to receive a deed 'free and clear' from the County." (**Pet., 7**). By failing to comply with

the Ordinance, and preventing City personnel from speaking at the auction, the County prejudiced Mr. Hill's ability to avoid buying property subject to condemnation proceedings. As a result, Mr. Hill could seek rescission or other legal or equitable remedies in a Michigan court.

Not only did Petitioner have actual notice of the condemned status of the Property and that it was subject to future demolition as of September 27, 2012, he had several months after that date to take legal action and failed to do so, despite available remedies. Because Petitioner was required to plead and prove inadequacy of state procedures and failed to do so, his procedural due process claim fails under *Parratt*. (**App. A, 14a**).

III. Negligence is Insufficient and Petitioner Cannot Hold the City Vicariously Liable for the County's Acts or Omissions

Petitioner's effort to blame the City for the County's failure to give notice is akin to imposing vicarious liability in contradiction of *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658 (1978). The City gave notice (in accordance with its official policy) to the owner at the time, the County, and conducted a pre-deprivation hearing, which the County did not contest. (**App. A, 4a-5a**). Additionally, the City's ordinances here provided additional process for potential subsequent transferees, such as Petitioner. *See* (**Pet., 3**). Since Petitioner cannot hold the City liable for the County's intentional acts, this Court should deny Petitioner's request for a writ.

Petitioner's claim against the City also seeks to impose liability for conduct that amounts to nothing more than negligence. However, a negligent deprivation of property is insufficient to state a procedural due process claim. *See Daniels v. Williams*, 474 U.S. 327, 330-31 (1986) ("overrul[ing] *Parratt* to the extent that it states that the mere lack of due care by a state official may 'deprive' an individual of life, liberty, or property under the Fourteenth Amendment."). Importantly, "a mere failure to act" is insufficient to impose liability under § 1983. *See Salehpour v. University of Tennessee*, 159 F.3d 199, 206 (6th Cir. 1998), *cert. den.*, 526 U.S. 1115 (1999). Alleging that the City failed to act when the County's Treasurer violated the ordinance only rises to the level of negligence. Likewise, a City employee's failure to record the Board's order is mere negligence.

CONCLUSION

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. In determining whether to grant a petition, this Court considers questions such as whether the Court of Appeals has entered a decision on an important matter which conflicts with a decision of another circuit, a state court of last resort, or with this Court. Sup. Ct. R. 10(a), (c). However, a petition "is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

Petitioner does not cite any case which is in conflict with the Sixth Circuit's holding. Moreover, the Petition does little more than assert errors in factual findings.

As the Sixth Circuit correctly found, the City's condemnation procedures satisfy procedural due process requirements. But for the County's unauthorized act of failing to comply with the disclosure provision of the City's ordinance, Petitioner would have been informed of the condemnation status of the property prior to his purchase. Because the Petitioner failed to plead and prove that there was no adequate state law post deprivation remedy, his claim could not succeed under *Parratt*. Alternatively, even when applying the traditional tests under *Mullane* and *Mathews*, Petitioner similarly failed to establish that the City denied him procedural due process.

Respondent City of Jackson therefore respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully Submitted,

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Dated: April 5, 2019

APPENDIX

APPENDIX

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APPENDIX

City of Jackson, Michigan Code of Ordinances § 17-27

Sec. 17-27. - Abatement of nuisances; procedure.

(a) *Dangerous buildings as public nuisances.* All dangerous buildings are hereby determined to be public nuisances and shall be abated by repair, rehabilitation, or demolition in accordance with the procedures specified in this article.

(b) *Departmental examination.* The building inspection division of the department of neighborhood and economic operations shall examine or cause to be examined any building or structure it believes to be abandoned, unsafe, or damaged, and if same is found to be a dangerous building, the division shall commence proceedings to cause its repair, rehabilitation or demolition. Whenever a building or structure designed or zoned for use as a residence has remained vacant and boarded up for a period in excess of six (6) continuous months, it shall be subject to periodic inspection by the building inspection division of the department of neighborhood and economic operations under the provisions of chapter 14 of this Code.

(c) *Commencement of proceedings; notice and order.*

(1) The building inspection division of the department of neighborhood and

economic operations shall commence proceedings under this section by issuing a notice and order directed to the owner or owners of record of a building or structure alleged to be dangerous. This notice and order shall require the owner of the building or structure alleged to be dangerous to commence, within the period of time established by the inspection division, the required repairs, rehabilitation or demolition of the building or structure. All required work shall be completed within the period of time set forth in the notice and order by the inspection division. If a building is occupied, the notice and order shall require the affected building, structure, or portion thereof to be vacated and not reoccupied until all required work has been completed and approved by the inspection division.

(2) Service of the notice and order shall be made upon the owner or owners of record by:

a. Personally delivering a copy to the owner; or

b. Mailing a copy by certified mail, postage prepaid, return receipt requested, to the owner as indicated by the records of the city assessor and posting a copy thereof upon a

conspicuous part of the building or structure; or

c. When service cannot be made by either of the above methods, by publishing a copy in a newspaper of general circulation within the county at least once each week for three (3) consecutive weeks and posting on or before the date of the last publication, a copy upon a conspicuous part of the building or structure.

(d) *Posting of signs on buildings deemed to be dangerous; recording documents.*

(1) The building inspection division shall cause to be posted in a conspicuous place on any dangerous building or structure a notice to read:

"Do Not Enter—Unsafe to Occupy"

Such notice shall remain posted until the required repairs, rehabilitation or demolition is completed. Such notice shall not be removed without written permission of the building inspection division, and no person shall enter this building except for the purposes of repairing, rehabilitating, or demolishing same.

(2) The building inspection division shall record with the county register of deeds all dangerous structure condemnation

notices and orders and building code board of examiners and appeals decisions upholding notices and orders within ten (10) business days of such notice, decision or order.

(e) *Abatement procedures.* If at the expiration of the time limit in the notice and order the owner has not complied with the requirements thereof, the building inspection division may institute proceedings hereunder to abate the nuisance.

(f) *Hearing; testimony; order; findings; noncompliance; costs.*

(1) Upon the request of the building inspection division in cases where a respondent has not complied with a notice and order issued under this article, the building code board of examiners and appeals shall conduct a hearing in order to determine whether the notice and order of the inspection division should be upheld.

(2) At least seven (7) days prior to the hearing referred to above, the building inspection division shall notify by first class mail the owner as shown by the city assessor's records. This notice shall consist of a copy of a complaint alleging noncompliance with the notice and order and a notice of hearing specifying the time and place of the hearing.

(3) The building code board of examiners and appeals shall take testimony and consider evidence presented by the building inspection division. In addition, the owner of the property and any interested party may present testimony and evidence if they so desire. Any board member may inspect any structure involved in the hearing prior to its commencement. The building code board of examiners and appeals shall render written findings of fact and a decision at the conclusion of the hearing either upholding the notice and order; upholding the notice and order with modifications; or dismissing the notice and order.

a. If the building code board of examiners and appeals determines, based upon the evidence presented at the hearing, that the structure referred to in the inspection division's notice and order is a dangerous building or structure, it shall uphold such order; or

b. If the building code board of examiners and appeals determines, based upon the evidence presented at the hearing, that the structure referred to in the inspection division's notice and order is a dangerous building or structure, but that the notice and order requires more than is

reasonably necessary to abate the nuisance, it shall uphold such order with modifications thereto consistent with any action it deems necessary to abate such nuisance; or

c. If the building code board of examiners and appeals determines, based upon the evidence presented at the hearing, that the structure referred to in the inspection division's notice and order is not a dangerous building, the notice and order shall be dismissed.

(4) If the owner fails to comply with the decision of the board, the building inspection division shall take any and all action needed to bring the building or structure into compliance. The owner in whose name the property appears upon the last local assessment records shall be billed, if possible, for all costs of such action at the address shown on such records. If such owner fails to pay the same within thirty (30) days after mailing of the bill, the city council may cause such costs to be levied and assessed as a special assessment upon the property and against the owner, and the city may bring suit against the owner of record to recover such costs.

(g) *Judicial review*. An owner aggrieved by any final decision or order of the building code board of

examiners and appeals may appeal the decision or order to the circuit court by filing a petition for an order of superintending control within twenty (20) days from the date of the decision or order.

(h) *Consent provision.* The owner of any building or structure may at any time admit in writing that such building is a dangerous building within the meaning of this section and consent that such building may be demolished.

(i) *Emergency order of the city manager.* Where it reasonably appears that there is immediate danger to the life or safety of any person unless a dangerous building is immediately altered, repaired or demolished, and notwithstanding the procedures set forth in this article, the city manager may cause the immediate repair, alteration, or demolition of such structure, and the cost thereof to be charged against the premises and the owner as provided in this section.

(j) *Owner defined.* For purposes of this section, the term "owner" means the person shown as owner by the records of the city assessor.

(k) *Building inspector not considered as ex officio member of board of appeals.* The building inspector shall not serve as an ex officio member of the building code board of examiners and appeals in any proceeding instituted under this section.

(l) *Transfer of ownership.* It shall be unlawful for the owner of any building or structure alleged to be dangerous who has received a notice and order, or upon whom a notice and order has been served pursuant to subsection (c)(2) of this section, to sell, transfer, or otherwise dispose of to another until the provisions of the notice and order have been complied with, or until such owner shall first furnish the grantee or transferee a true copy of said notice and order issued by the building official, and shall furnish to the building official a signed and notarized statement from the grantee or transferee acknowledging the receipt of such notice and order, and fully accepting the responsibility, without condition, for making the required repairs, rehabilitation, or demolition to the alleged dangerous building or structure as required by such notice and order.

(m) *Penalties.* Any person who willfully refuses to vacate a building ordered vacated under this section, who reoccupies or causes or allows such a building to be reoccupied without satisfying all requirements of a notice and order issued under subsection (c)(1) of this section, who, without permission, removes a notice posted on a building pursuant to subsection (d) of this section, or who transfers property in violation of subsection (l), shall be guilty of a misdemeanor and punished upon conviction thereof as provided in section 1-18 of this Code.

(n) *Fees.* The city council shall establish by resolution, fees for charges in relation to costs or expenses incurred by the city in initiating or commencing proceedings before the building code board of examiners and appeals (board). Such fees shall include, but not necessarily be limited to, costs or expenses incurred for inspections conducted by city staff prior to board hearings, for actual proceedings before the board, and other costs or expenses relating to prosecution of a case before the board. All fees established pursuant to this subsection shall include the costs associated with reasonable overhead and administrative costs.

If an owner fails to pay an invoice for fees directed to him or her under this subsection, within thirty (30) days of mailing of said invoice, the city may cause the cost reflected in said invoice to be assessed against the premises as a special assessment, pursuant to Serial Section 273 of the City Charter, and the city may institute an action against the owner for the collection of said costs in any court of competent jurisdiction. However, the city's attempt to collect such costs by any process shall not invalidate or waive any lien filed against the property.