



**TO:** Mayor Shaun Sipma  
Members of the City Council

**FROM:** John R. Zakian, DR Grant Program Manager & Chief Resilience Officer

**DATE:** November 20, 2018

**SUBJECT: AUTHORIZE EMINENT DOMAIN FOR NINE CDBG-NDR ACQUISITIONS**

**I. RECOMMENDED ACTION**

City Council authorize the Eminent Domain Process to commence for acquisition of 600 4<sup>th</sup> Ave. NE, 318 6<sup>th</sup> St. NE, 314 6<sup>th</sup> St. NE, 520 4<sup>th</sup> Ave. NE, 325 6<sup>th</sup> St. NE, 321 6<sup>th</sup> St. NE, 319 6<sup>th</sup> St. NE, 303 6<sup>th</sup> St. NE and 208 6<sup>th</sup> St. NE

**II. DEPARTMENT CONTACT PERSONS**

John R. Zakian, DR Program Manager & Chief Resilience Officer, 423-4528

**III. DESCRIPTION**

A. Background

These nine properties are located in what is identified as Buyout Area #4 in the HUD approved CDBG-NDR Action Plan. Seven of the properties are owned by three siblings and the other two properties are individually owned. The city has carried out the due diligence with the owners of these properties as set forth in HUD's involuntary acquisition guidelines and the requirements of the federal Uniform Relocation Act including undertaking an independent appraisal, an independent review appraisal, administrative conformation of the appraisal, making an initial offer to the property owner based on the value established through the independent appraisal process, allowing sufficient time for the property owner to make a counter offer, city response to the counter offer, and a minimum 30 day opportunity for the property owner to accept final offer made by the city. The use of involuntary acquisition which may include Eminent Domain is predicated on the HUD and URA requirement that acquisition is for an acceptable public purpose (flood mitigation and control measures are acceptable), there is a defined boundary for such public purpose projects for which there is no discretion in the properties to be acquired, there is a defined project, and there is a known timeline necessary to acquire the property. The timeline for flood mitigation projects is communicated through the Joint Souris Water Board and coordinated with the city of Minot Public Works Department. Because of the wide variation experienced in North Dakota courts in terms of scheduling and reaching conclusion in Eminent Domain cases, there is need now to authorize commencement of the Eminent Domain process. The requirement for City Council authorization is set forth in the policies and procedures established for the involuntary acquisition program. There is currently one Eminent Domain case now in the courts.

B. Proposed Project

Letters have been sent to the affected property owners advising them of this step of recommending commencement of Eminent Domain proceedings but informing them that the opportunity continues for them to avoid legal proceedings by accepting the final offer made. Authorizing Eminent Domain proceedings by the City Council does not mean we will not

continue to seek a resolution of the acquisition outside of a court decision. It does trigger the city's use of the outside counsel under contract for Eminent Domain proceedings. Several of the properties authorized for Eminent Domain proceedings in the past two Council meetings have been or in process of being amicably settled. None of the ones previously authorized have reached the point of having to proceed to Eminent Domain.

**IV. IMPACT:**

A. Strategic Impact:

Provides all necessary options for city to acquire the properties on a timely basis consistent with flood control projects' timelines.

B. Service/Delivery Impact:

Properties need to be acquired in support of flood control projects.

C. Fiscal Impact:

All costs including outside counsel fees will be charged to CDBG-NDR acquisition allocation.

**V. ALTERNATIVES**

N/A

**VI. TIME CONSTRAINTS**

Property acquisition according to current flood projects' timelines need to be completed before end of summer, 2019.

**VII. LIST OF ATTACHMENTS**