



## Legislation Text

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**File #:** RES 14-1305, **Version:** 1

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Denying the request for a stay of implementation of RLH VO 14-5 (ordering vacation of 328-330 NINTH STREET EAST), pending appeal.

WHEREAS, by letter dated January 28, 2014, City staff determined that the Fire Certificate of Occupancy for the structure located at 328-330 9th Street East ("Schurmeier Lofts") should be revoked and the Schurmeier Lofts vacated; and

WHEREAS, that determination was properly appealed to the Legislative Hearing Officer by Mr. James Bartholow, President of the Schurmeier Lofts Home Owners Association; and

WHEREAS, after numerous hearings before the Legislative Hearing Officer and the City Council, and significant effort on the part of City officials and staff to work with owners and occupants of the Schurmeier Lofts to resolve the problems at the building without requiring it to be vacated, the Legislative Hearing Officer recommended denying Mr. Bartholow's appeal; and

WHEREAS, on April 2, 2014, by resolution RLH VO 14-5, the City Council adopted the Legislative Hearing Officer's recommendation and ordered that, unless certain conditions were met, the Schurmeier Lofts property must be vacated by June 1, 2014, for the reasons provided in the record and discussion accompanying that resolution. The Council specifically found that no part of the building can be safely occupied because of defects in certain systems that affect life safety and are shared across the entire property, and that the owners and occupants of the Schurmeier Lofts are unlikely to be able to work together to timely and fully resolve those life safety issues; and

WHEREAS, the Schurmeier Lofts property has since been transferred into the City's Vacant Building Program under Chapter 43 of the Saint Paul Legislative Code; and

WHEREAS, in accordance with Chapter 43, the Schurmeier Lofts property has been placarded and inspected by City staff to ensure that it is vacant and secured; and

WHEREAS, on June 2, 2014, Mr. Robert D. Seltz, who owns several units in the Schurmeier Lofts and resided in one unit during the pendency of Mr. Bartholow's appeal; Selable Purchasing, LLC; and Zyxs, LLC (collectively "Relators"), obtained a writ of certiorari from the Minnesota Court of Appeals to review the City Council's decision in resolution RLH VO 14-5; and

WHEREAS, Relators' filings in the Court of Appeals indicate their intention to argue that the City Council's decision in resolution RLH VO 14-5 should be reversed because the City Council based its decision on an incomplete record; because the City Council improperly delegated its quasi-judicial authority; because the City failed to follow its own procedures; and because the City should have only partially revoked the Fire Certificate of Occupancy and allowed Mr. Seltz to remain living in his unit in the Schurmeier Lofts; and

WHEREAS, Relators have requested the City Council to stay implementation of resolution RLH VO 14-5, including particularly the requirement that they vacate the Schurmeier Lofts, pending the outcome of the Court of Appeals' review; and

WHEREAS, Relators' request for a stay should be denied because no conditions could be attached to a stay that would both protect the public interest and be achievable by Relators, and the public interest in enforcing resolution RLH VO 14-5 significantly outweighs the interest of Relators in occupying in the Schurmeier Lofts because of the documented life safety hazards to anyone occupying the building; and

WHEREAS, it appears that Relators have already vacated the property, making the request for a stay moot, and the request for a stay should also be denied on that independent basis; and

WHEREAS, the Relators did not appeal City staff's original decision contained in the letter of January 28, 2014, and are therefore not proper parties to seek a stay, nor did Relators present to the Legislative Hearing Officer or the City Council any of the arguments that they intend to make before the Court of Appeals despite

notice and opportunity to do so, and the request for a stay should also be denied on each of those independent bases; now, therefore, be it

RESOLVED by the City Council of the City of Saint Paul, Minnesota, that the request for a stay is denied.