

TO: THE COMMUNITY DEVELOPMENT AND REGULATORY SERVICES
COMMITTEE OF THE MINNEAPOLIS CITY COUNCIL

FROM: JAMES HEIBERG, ATTORNEY AT LAW, 476 ½ SUMMIT AVENUE, ST.
PAUL, MINNESOTA 55102

DATE: OCTOBER 21, 2016

RE: HEARING ON OCTOBER 25, 2016 REGARDING RENTAL DWELLING LICENSE
FOR 3219 GIRARD AVENUE NORTH IN MINNEAPOLIS

NOTICE OF REPRESENTATION

Please be advised that Robert Zeman and RORI Investments LLC have hired attorney James Heiberg to represent them in the October 25, 2016 hearing before the Community Development and Regulatory Services Committee of the Minneapolis City Council.

ISSUES AND ARGUMENTS

Mr. Zeman and RORI Investments LLC would like to bring to the Committee's attention several issues related to the revocation of the rental dwelling license for 3219 Girard Avenue North. The Committee should consider the following arguments:

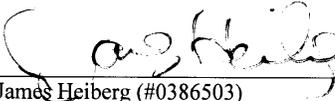
1. Holding Mr. Zeman and RORI Investments responsible for the acts of tenants violates the Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution, the right to equal protection under Article I, Section 1 of the Minnesota Constitution, the Due Process Clauses of the state and federal constitutions, the liberty and property interests protected by the state and federal constitutions, the right to freedom of association under the First Amendment to the U.S. Constitution, and the constitutional right to petition the government, which right is granted in the First Amendment to the U.S. Constitution.
2. Prohibiting Mr. Zeman and RORI Investments from renting to persons with criminal records and/or depriving them of their property rights because of the actions of their tenants violates the Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution, the right to equal protection under Article I, Section 1 of the Minnesota Constitution, the Due Process Clauses of the state and federal constitutions, the liberty and property interests protected by the state and federal constitutions, the right to freedom of association under the First Amendment to the U.S. Constitution, and the constitutional right to petition the government, which right is granted in the First Amendment to the U.S. Constitution.
3. Mr. Zeman and RORI Investments rent to racial minorities and other protected class members, and the revocation of the rental dwelling license for 3219 Girard Avenue North violates the Fair Housing Act because it deprives protected class members of affordable housing.
4. Depriving Mr. Zeman and RORI Investments of the rental dwelling license because of the acts of tenants, and/or because of tenants' criminal histories, violates Article I, Section 2 of

the Minnesota Constitution because it deprives members of this state of their rights or privileges to rent housing in Minneapolis. Are persons with criminal records prohibited from living in Minneapolis? Are their rights or privileges to rent housing in Minneapolis denied, or partially denied?

5. Depriving Mr. Zeman and RORI Investments of the rental dwelling license because of the acts of tenants, and/or because of tenants' criminal histories, is an *ex post facto* law that violates Article I, Section 11 of the Minnesota Constitution.

6. Minneapolis Code of Ordinances section 244.2020, which punishes landlords, or leads to punishment of landlords, for the actions of their tenants and/or for renting to tenants who have criminal histories, is unconstitutional because it violates state and federal constitutional equal protection rights, the federal constitutional right to petition the government, state and federal constitutional due process rights, and state and federal constitutional liberty and property interests.

Date: 10/21/16



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October 25, 2016

REMARKS AT CITY COUNCIL COMMITTEE HEARING

James Heiberg, Attorney for Robert Zeman and RORI Investments

I believe that the Nuisance Ordinance, Minneapolis Municipal Code 244.2020, is unconstitutional six ways from Sunday. Originally the Ordinance put a landlord on the path to revocation after a tenant was convicted of a crime. Since around 2006, the ordinance has put a landlord on the path to revocation for tenants' "conduct." All it takes now is a few police visits to the rental property to put a landlord at risk of losing his or her rental dwelling license.

The Ordinance has never really encountered a serious challenge in Court. My client has no choice but to challenge it. Nuisance laws across the country have come under increasing attack, and for good reason.

The Nuisance Ordinance, as applied here to RORI Investments and Mr. Zeman, violates a tenant's right to petition the government, guaranteed under the First Amendment to the U.S. Constitution. A phone call from the tenants themselves, asking for police assistance, could even count against the landlord. And by violating a tenant's right to petition the government -- that is, to call the police -- the Ordinance violates the landlord's right to petition the government.

The Ordinance also runs afoul of liberty and property rights found in the state and federal constitutions, Equal Protection rights, and Due Process rights.

This isn't "enlisting the aid of landlords," as the Minnesota Supreme Court wrote in 1996 in *Zeman v. City of Minneapolis*, 552 N.W.2d 548 (Minn. 1996). This is punishing landlords.

And the ordinance does not "foster cooperation between landlords and the police department's community services bureau." *Id.* What the Ordinance does is punish landlords for the actions of their tenants, or their tenants' neighbors. What the ordinance also does is limit the availability of rental housing to persons with criminal records.

"Protection of the public" is a desirable goal and policy, but the Ordinance's punishment of landlords for the acts of tenants does nothing to further that goal and policy. Landlords cannot prevent the acts of others any more than peace officers can prevent the acts of others.

So how about forbidding landlords from renting to persons with criminal histories, based on the actions of tenants in the past? If a landlord's tenants make enough phone calls to police, the landlord will then be required to refrain from renting to persons with criminal histories.

In 1993, in *St. Paul v. Spencer*, 497 N.W.2d 305 (Minn.Ct.App. 1993), in discussing a state nuisance statute, the appellate court reasoned that...

If the statute permitted abatement on the evidence of a single conviction with no opportunity for the property owner to deny the underlying act or first to eliminate the

illegal act himself, the law would likely neither be reasonable nor **constitutional**.

However, the abatement statute *sub judice* is designed to encourage property owners to abate the basis for the nuisance themselves by delivering notice of the convictions to the owners.

There are a couple things that need to be corrected out of that case. First, the ordinance isn't limited to convictions anymore -- unlike in 1993, the ordinance now sets the landlord on the path to revocation or a nuisance action for mere "police activity," for just police calls. And these calls could be made by a tenant in the subject property who needs police help.

Second, the ordinance doesn't just "encourage" property owners to abate nuisances like bad tenants, it also punishes property owners for the actions of others.

Police officers can rarely "prevent" crime -- they usually respond to it. How could property owners be expected to be better crime preventers than police officers? And it's not even necessarily crime we're talking about -- just police calls. Loud music that results in no criminal charge. If police get called and there's no police report and no criminal charge, aren't tenants and landlords being punished for the simple petitioning of government?

I assert that the right to housing should be considered a fundamental constitutional right, that it should be included in that penumbra of constitutional rights that have been

found by the U.S. Supreme Court, and any law that infringes on that right should be given strict scrutiny by a court of law.

We already have a system for dealing with crime: We have police to arrest the offender, and we have prosecutors, courts, jails, and prisons. Depriving a landlord of his or her rental dwelling license because a tenant has played loud music is not narrowly tailored to achieve the goal of reducing crime.

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10/25/16