

LEGAL MEMORANDUM

To: Mayor and Councilmembers

From: David F. Frundt, City Attorney

Re: Current Regulation of Indoor wood burning Heating units.

Date: 2/20/2012

I have been asked by the council to review and research the issue of regulating indoor wood burning heating units within the city of Blue Earth pursuant to a citizen complaint concerning the unit located at 202 N. Main St. in Blue Earth. Based upon my review of the City code, state statutes and after consultation with the League of Minnesota Cities, it is my conclusion that the unit at 202 N. Main St. is properly permitted at this time.

There has been some confusion on this issue resulting from the history of actions taken by the City Council in recent years. As many of you may remember, this issue raised its head when the property located on the corner of Main St. and 7<sup>th</sup> street was heating with wood in 2006 or so. At the time, enforcement actions commenced to deal with the noxious smoke. It was determined that the building had never applied for a building permit for the installation of a wood burning heating unit (stove) and therefore, it was illegally heating with wood, posing a fire hazard. A search warrant was obtained and the property owner agreed to stop burning wood in the fashion he was at that time.

Additionally, the City Council then passed an outright ban on exterior heating units using wood in a commercial district in Blue Earth. This ban was amended to a permit only system in 2007. Finally, in 2010, the exterior unit ban was again passed in a commercial district. However, none of the ordinances affect the current unit at 202 N. Main Street, as it is a unit installed on the interior of a commercial building.

Interior wood burning heating units are regulated by the Minnesota State Building Code. The units must be installed in a fashion that meets the building code for fire safety purposes. A building permit is required, with appropriate inspection by a building official. Once the permit is issued, the unit is a legal unit. The City of Blue Earth has adopted the State Building Code.

In the case at hand, the unit installed in 2007 was properly inspected and installed, and a building permit was issued. No other permit was required because it was in the interior of the building. The state building code further effectively preempts any local regulation of the issue as it related to permitting the units.

Because of the preemption issue, the City does not have the ability to require a permit on a yearly basis. However, it still can investigate the issue of the smoke from such a unit being a public nuisance. If it is determined that the smoke issue is a public nuisance, then the City can seek action to address the nuisance until the nuisance is abated. This may include some sort of study to determine what the cause is, and if anything can be done about the problem. It is unclear as to whether or not a nuisance enforcement action can lead to an injunction against the use of the interior heating unit. completely. I will need to do further research on the matter if no other reasonable solution is possible.

Submitted by:

David F. Frundt