

**CITY COUNCIL
COMMUNICATION:**

ITEM _____

**OFFICE OF THE CITY MANAGER
CITY OF DES MOINES, IOWA**

98-364

SYNOPSIS –

AGENDA:

AUGUST 24, 1998

SUBJECT:

APPROVE LEGAL
ACTION AND SEEK
A COURT ORDER
TO PREVENT
UNLAWFUL USE OF
PROPERTY

TYPE:

RESOLUTION
ORDINANCE
RECEIVE/FILE

SUBMITTED BY:

JAMES GRANT
COMMUNITY
DEVELOPMENT
DIRECTOR

The real estate located at and locally known as 1346 and 1348 Buchanan is being used for the operation of a contractor' s business and/or for the storage of contractor' s equipment. The real estate is zoned a “ C-2” district. Operation of a contractor' s business or the storage of a contractor' s equipment of this real estate is not a permitted land use, pursuant to Chapter 2A-17 of the Municipal code of the City of Des Moines, Iowa.

The city has filed an action in the Polk County District Court seeking a court order directing the owners to remove the contractor' s equipment. Additionally, we are seeking an order which will enjoin the property owners from operating a contractor' s business, and from storage of equipment for the business, on the real estate. This remedy was sought from the court as an abatement of the nuisance that the business and contractor' s equipment causes the community by ceasing the business operation and removing the contractor' s equipment.

Additionally, the real estate is in violation of Chapter 17 of the Municipal Code of the City of Des Moines, Iowa. The owners are storing unlicensed or inoperable vehicles on the real estate. The City is also seeking a court order to abate this nuisance by removal of the vehicles or moving them to a completely enclosed building.

As a result of this court action the issue of how best to address owners who fail to comply with zoning ordinances regarding land use policies was further researched. It was found that there is a body of case law which supports the court granting orders which direct owners to comply with zoning/land use ordinances. Upon further review it was found that there is an Iowa Code provision which allows Council to direct that action be taken to prevent any illegal act, conduct, business, or use in or about such premises.

FISCAL IMPACT –

N/A

RECOMMENDATION –

Approve legal action to amend pending petition to seek a court order to prevent the unlawful use of the property.

BACKGROUND –

Ordinances regarding land use and permitted use of property within the city are authorized by Iowa Code, Chapter 414 (1997). The city has enacted zoning ordinances to promote the health, safety, morals and the general welfare of the city. Council has placed restrictions on land use in order to promote the orderly use of land and this is a valid police power.

In order to insure that the ordinances are enforced council has been granted the right to institute any appropriate action or proceedings to prevent any illegal act, conduct, business, or use in or about such premises.