

Date July 23, 2007


An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by amending Sections 70-211, 70-213, 70-214, 70-218 and 70-219 thereof, relating to specified crime property",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)



 Douglas P. Philip
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

MOTION CARRIED

APPROVED

 Mayor

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by amending Sections 70-211, 70-213, 70-214, 70-218 and 70-219 thereof, relating to specified crime property.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by amending Sections 70-211, 70-213, 70-214, 70-218 and 70-219 thereof, relating to specified crime property, as follows:

Sec. 70-211. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bootlegging means the illegal sale or service of alcoholic liquor, wine, or beer in violation of chapter 10 of this Code or I.C. ch. 123.

Chief of police means the person who has the responsibility to supervise and direct the police department, as defined by section 86-27 of this Code, and for purposes of this division may include his or her designee.

Controlled substance means a drug, substance or immediate precursor as defined by I.C. ch. 204.

Gambling means games of skill or chance as defined by I.C. ch. 99B and prohibited by I.C. ch. 725.

Owner means any person, agent, firm, corporation, association, or a partnership, including a mortgagee in possession, in whom is vested all or part of the legal title to property or all or part of the beneficial ownership and the right to present use and enjoyment of the premises.

Person means any natural person, association, partnership, corporation, or other legal entity capable of owning or using property.

Prostitution, pimping, and pandering means those acts or activities as defined by section 70-176 of this chapter or by I.C. ch. 725.

Specified crime property means any structure, including the real property upon which it is situated, in which activity involving the unauthorized delivery, possession or manufacture of a controlled substance, illegal gambling, bootlegging, prostitution, pimping, or pandering, disorderly house under section 70-35 of this chapter, or any criminal activity involving a weapon such as but not limited to discharging, carrying concealed, or assault with a weapon is occurring or has occurred.

Structure means any building, building complex or structure, including but not limited to edifice, units, or any portion thereof, and the real property upon which such building, building complex or structure is situated.

Sec. 70-213. Penalties.

Any person who violates the provisions of section 70-212 of fails to perform an act required by this division or who commits an act prohibited by this division shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.

Sec. 70-214. Procedure for enforcement.

- (a) When the chief of police has a reasonable belief that a structure is being used or maintained as a specified crime property, in violation of this division, the chief of police shall notify the owner of record in writing that the structure has been declared to be a specified crime property.
- (b) A reasonable belief that a structure is being used as specified crime property may be found from but is not limited to evidence of drug paraphernalia in or around the structure; an increase in vehicular or pedestrian traffic in or around the structure; observations of the exchange of money; verified citizen complaints of bootlegging; unauthorized delivery or manufacture of a controlled substance; illegal gambling, bootlegging, prostitution, pimping, or pandering; police case investigation reports indicating activity of disorderly house or crimes involving weapons; and any

other activity which leads a police officer to reasonably believe violations of this division exist.

Sec. 70-218. Conduct of hearing.

- (a) The hearing held pursuant to this division shall be conducted before a hearing officer designated by the city manager within a reasonable period of time, but not to exceed 15 business days, excluding Saturdays, Sundays and city holidays, from the date of a written demand therefor. Such hearing may be continued for good cause. A notice of hearing, including the time, date and location of the hearing, shall be made by mailing a copy of the notice by first class mail, postage prepaid to the owner of record.
- (b) The sole issue before the hearing officer shall be whether there exists a reasonable belief that the structure was being used as specified crime property as described in ~~when~~ the declaration of specified crime property was made pursuant to section 70-214. The hearing officer shall decide only that either (i) there is a reasonable belief that the structure was used as specified crime property and that the provisions of this division shall apply, or (ii) there is not a sufficient reasonable belief that the structure was being used as specified crime property and that the procedures of this division as to the notice being appealed shall be permanently stayed. A finding of no reasonable belief however shall not preclude a future independent complaint, investigation and notice of specified crime property.
- (c) The decision of the hearing officer shall be issued within four days of the hearing and the owner of record shall be notified consistent with the notice provisions of this division.
- (d) The decision of the hearing officer shall be final.

Sec. 70-219. Effect of notice.

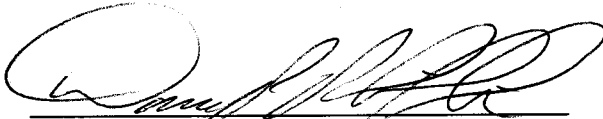
- (a) Subsequent to the declaration and notice that there exists a specified crime property, an owner shall have the opportunity to abate the illegal activity within ten days. If a landlord/tenant relationship exists, the owner/landlord may be deemed to have abated the activity upon demonstration that he or she has taken legal action under Iowa Code section 562A.27A or any other applicable statute ~~as allowed by I.C. ch. 562A~~ to

terminate the rental agreement, or if immediate termination of the rental agreement is not permitted by law, has delivered a written notice to cure to the tenant or tenants under Iowa Code section 562A.27 or any other applicable statute, and continues in good faith to follow abatement procedures and provides the chief of police with copies of all notices served in accordance with I.C. ch. 562A.

- (b) If after 20 days the chief of police determines that a specified crime property has not been abated, a notice of fine and an order of abatement shall be filed in compliance with I.C. § 364.22.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Douglas P. Philip
Assistant City Attorney