



**Roll Call Number**

**Agenda Item Number**

70

**Date** October 3, 2022

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, as heretofore amended, by enacting Chapter 61, relating to the Vacant Property Registration Ordinance",

which was considered and voted upon under Roll Call No. 22-\_\_\_\_\_ of September 12, 2022; again presented.

Moved by \_\_\_\_\_ that this ordinance be considered and given second vote for passage. Second by \_\_\_\_\_.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	

**CERTIFICATE**

I, LAURA BAUMGARTNER, 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.

\_\_\_\_\_ Mayor

\_\_\_\_\_ City Clerk

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, as heretofore amended, by enacting Chapter 61, relating to the Vacant Property Registration Ordinance.

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

Section 1. That Chapter 61, relating to the Vacant Property Registration Ordinances of the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is enacted, as follows:

**Chapter 61 ~~RESERVED~~ VACANT PROPERTY REGISTRATION ORDINANCE**

Sec. 61-1. Title.

Sec. 61-2. Purpose.

Sec. 61-3. Powers of department.

Sec. 61-4. General.

Sec. 61-5. Interference prohibited.

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Sec. 61.10. Registration of vacant structure.

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Sec. 61.12. Application for a business account for a vacant property.

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Sec. 61.18. Additional authority as to maintenance and security.

Sec. 61.19. Notices.

Sec. 61.20. Service of notice.

Sec. 61.21. Administrative hearings.

Sec. 61.22. Nuisances enforced by civil action.

Sec. 61.23. Emergency actions.

Sec. 61.24. Renovation agreement.

Sec. 61.25. Civil Actions; alternative relief.

Sec. 61.26. Right of Entry.

**Sec. 61-1. Title.**

This article of Chapter 61, shall be known as the "City of Des Moines Vacant Property Registration Ordinance."

**Sec. 61-2. Purpose.**

It is the intent of the City of Des Moines, through the adoption of this article, to establish a mechanism to protect residential and commercial neighborhoods from becoming blighted through the lack of maintenance and security due to vacant properties; to establish a vacant property registration program; to ensure properties are free of exterior code violations prior to sale or occupation and to set forth guidelines for the maintenance of vacant properties.

**Sec. 61-3. Powers of department.**

Department employees designated by the department director may enter onto and into open unobstructed property and structures to investigate, locate, and identify nuisances that occur in the city. Designated department employees shall have full authority to declare a condition to be a nuisance and issue appropriate notices provided for by this article and such designated employees may take such further action as required and permitted by this article. Designated department employees shall have all powers and authority necessary to cause the abatement of the nuisance in accordance with this article. If entry onto real property for the purposes described in this section is refused, an administrative search warrant may be obtained as provided in section 1-19 of the Municipal Code.

#### **Sec. 61-4. General.**

The administrator shall maintain a data base of all vacant properties in the city, cause inspections to be made to determine the condition of dwellings, commercial structures mobile homes, similar dwellings, accessory structures, and premises located within the corporate limits, and may issue notices as provided in this article.

#### **Sec. 61-5. Interference prohibited.**

Interference with, or obstruction of, the City's lawful removal of a violation by the city is prohibited.

#### **Sec. 61-6. Definitions.**

Unless otherwise expressly stated, or the context clearly indicates a different intention, the following terms have the following meanings and shall be so construed wherever they appear in this article:

*Administrator* means the administrator of the Neighborhood Inspection Division ("division") or his/her designee. The administrator shall be the authorized representative for the enforcement of this chapter and for the administration of the division.

*Accessible premise* means a property that is physically accessible through a compromised or breached gate, fence, wall, or other barriers, intended to provide physical security to the property, or by the absence of such barrier.

*Accessible structure* means a structure or building that is unsecured, compromised or breached in such a way as to allow access to the interior space by unauthorized persons.

*Accessory building* means a structure on the same lot, separate from, and of a nature customarily incidental and subordinate to the principal residential structure that may be used for, but is not limited to, the storage of equipment, materials, vehicles, and other miscellaneous items of the occupants of the primary dwelling unit(s). Trailers, semi-trailers, tents, motor vehicles, and component parts thereof shall not be considered accessory buildings. A structure which might otherwise be considered an accessory building, but which is connected to the principal residential structure by a breezeway or other extension of the principal residential structure containing a functional roof and floor shall, for the purposes of this chapter lose its status as an accessory building, become part of the principal residential structure, and shall be subject to all restrictions applicable to a principal residential structure.

*Authorized management agent* means a property manager, property management or maintenance company, or similar person or entity responsible for the maintenance of real property as agent of an owner, mortgagee, or other responsible party, or any person appointed by the owner(s) or mortgage holder who has charge, care, or control of a structure or premises. Such person shall be authorized to accept service of communications from the City of Des Moines.

*Easement* means that portion of land or property reserved for present or future use by a person or agency other than the owner(s) of the real estate. The easement shall be permitted to be for use under, on, or above said land or property.

*Evidence of vacancy* means any condition or circumstance that on its own, or combined with other conditions or circumstances present, would lead a reasonable person to believe that a

property is vacant. Such conditions may include, but not are limited to, disconnection of utility services, broken windows and or doors, overgrown or dead vegetation, including lawns, shrubbery and other plantings; accumulation of abandoned personal property, trash or waste; visible lack of maintenance of any building or structure on the property; graffiti on or other defacement of buildings or structures on the property; and any other condition or circumstance reasonably indicating that the premise is not occupied.

Exterior property means the open space on the premises and on adjoining property under the control of the owner(s) or authorized management agent of such premises.

Extermination means the control and elimination of insects, rats, or other pests by elimination of harborage places; by removing or making inaccessible materials that serve as food; by poison spraying, fumigation, trapping or by any other approved pest elimination method.

Foreclosure means the process, either judicial or extra-judicial, invoked by the owner or holder of a mortgage, by which a property placed as security for a real estate loan in which the mortgage holder is notified of a default, the filing of a foreclosure, sold at public or private sale to satisfy the debt of the borrower in the event of a default by the borrower under the terms of the promissory note or mortgage.

Garbage means animal or vegetable waste resulting from the handling, preparation, cooking, and/or consumption of food.

Good condition means no obvious maintenance required with all major components and materials still functional and contributing toward the extended life expectancy of the structure(s) and premise(s).

Good repair means fit for human habitation in accordance with all health codes, everything operates as it should, the property is clean and well maintained inside and out, and there is no wasting or neglect of the property, and it is maintained in good condition.

Grade means the lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line or, where the property line is more than five feet from the building, between the building and a line five feet from the building.

Guards means a building component, or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

Imminent danger means a condition which could cause serious or life-threatening injury or death at any time.

Infestation means the presence of insects, rats, vermin, or other pests within or contiguous to a structure or premises of insects, rodent's vermin or other pests.

Improvements shall include, but not be limited to, parking lots, grass, ground covers bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf whether shown on an approved site plan or not.

Inoperable and/or unsafe vehicle or boat is any motor vehicle, recreational vehicle, trailer, semitrailer, or boat that meets one or more of the following criteria:

- (1) lacks a current registration or any component part, engine or parts that render it incapable of use and/or unsafe for its intended use;
- (2) with a missing, broken, or shattered windshield or any exposed broken glass edges;
- (3) with a missing fender, door, hood, steering wheel, trunk top, or trunk handle;
- (4) that has become a habitat of rats, mice, snakes, or other vermin or insects;
- (5) that is left unattended on jacks, blocks, or elevated in any other way which constitutes a threat to the public health, safety or welfare;

(6) that because of its condition or method of storage constitutes a threat to public health and safety.

Inoperable motor vehicle means a vehicle which cannot be driven upon the public street for reasons including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

Junk means all old or scrap copper, brass, lead, or any other non-ferrous metal; old rope, rags, batteries, paper, trash, rubber debris, waste, used lumber or salvaged wood; dismantled or inoperable vehicles, unsafe vehicles, machinery and appliances or parts of such vehicles, machinery or appliances; iron, steel, or other old or scrap ferrous material; old discarded glass, tin ware, plastic, or old discarded household goods or hardware; cut brush, including dead or decaying plant material, except a contained compost pile or orderly stacked firewood if cut in lengths less than or equal to four feet and stored at least eighteen (18) inches above the ground surface.

Mortgagee means the person or entity that is the owner or holder of a mortgage, deed of trust or similar instrument encumbering real property as security for a promissory note or other debt.

Mobile home means any vehicle without motive power and so designed, constructed, or reconstructed as a dwelling unit to permit the vehicle to be used as a place for human habitation by one or more persons. It may also include any such vehicle with motive power not registered as a motor vehicle in this state. A mobile home is factory-built housing built on a chassis. A mobile home may not be construed to be a travel trailer or other form of recreational vehicle. A mobile home shall be construed to remain a mobile home, subject to all regulations pertaining thereto, whether or not wheels, axles, hitches, or other appurtenances of mobility are removed and regardless of the nature of the foundation provided.

Neglect means the lack of proper maintenance for a building, structure, or premise.

Neighborhood Inspection Division (hereinafter "division") means the division within the city charged with the duty to inspect premises, and structures for compliance with this article, and may also mean, as the context indicates, a member of that division.

Openable area means the part of a window, skylight, or door which is available for unobstructed ventilation, and which opens directly to the outdoors.

Owner, for the purposes of Chapter means any person, agent, firm or corporation having legal or equitable interest in the dwelling unit(s); or a recorded interest in the official records of the state or county as holding title to the real estate; or otherwise having control of the real estate or dwelling unit(s), including but not limited to the guardian of the estate of any such person, the executor or administrator of the estate of such person who is ordered to take possession or control of the real estate by the court.

Person means an individual, a corporation, a partnership, or any other group acting as a unit.

Pest elimination means the control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible material that serve as the food or water; or by other approved pest elimination methods.

Premises means a lot, plot, or parcel of land, easement, or public way, including any structure or mobile home thereon.

Rubbish means combustible and non-combustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke, and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, and other similar material.

Secure, means the closing and locking of windows, doors, gates, and other openings of such size that may allow access to enclosed areas of the property or to buildings and structures on the

property. Walls and fences surrounding the property, or any portion of the property shall be maintained in good repair. Broken windows shall be secured by replacing or repairing and reglazing. Boarding of broken windows shall be used only as a temporary corrective measure secured in accordance with the International Property Maintenance Code.

Structure means that which is built or constructed or a portion thereof.

Vacant property means any property, including any building or structure thereon, that is not legally occupied.

Workmanlike manner means repairs, maintenance work, alterations or installations that are a request, directly or indirectly, pursuant to the enforcement of this chapter which shall be executed and installed in accordance with the manufacturer's instructions and executed in a skilled manner, generally plumb, level, square, in line, undamaged, without marring adjacent work, using compatible materials approved for the use, like in nature and look to remaining material if there is a partial replacement or repair to maintain the structure and premise in good condition.

### **Sec. 61-7. Applicability.**

- (a) This article shall apply to vacant properties with residential, accessory, or commercial occupancies or improvements located thereon.
- (b) This article shall also apply to properties that are the subject of a foreclosure action as set out in this article.
- (c) This article shall be considered cumulative and not superseding of, or subject to, any other law or provision relating to the same subject but shall rather be an additional remedy available to the city above and beyond any other state, county or local law or regulation.

### **Sec. 61-8. Exemptions.**

Property shall be exempt from the registration requirement of this article if either of the following conditions exist.

- (a) The property is not the subject of foreclosure and is listed in the applicable multiple listing service(s) or other substantial competent evidence of actively marketing and the property has remained vacant more than one hundred eighty (180) days and the outward appearance is being maintained; or
- (b) The property is under construction and the contractor has applied for and is covered by a valid building permit(s).
- (c) At such time either of the qualifications for exemption ceases to exist, the property shall be subject to the registration requirements of this article.

### **Sec. 61-9. Properties in foreclosure.**

- (a) Any mortgagee who holds a mortgage on real property located within the city shall perform an inspection of the property that is the security for the mortgage, upon default by the mortgagor, prior to the issuance of a notice of default.
  - (1) If a property is found to be vacant or shows evidence of vacancy, as defined in this article, any mortgagee who holds a mortgage on the real property shall comply with the registration requirements of this article, within ten (10) days of the inspection.

- (b) Any mortgagee who files a foreclosure or Notice of Lis Pendens shall comply with the registration requirements of this chapter, withing ten (10) days of the filing.
- (c) Any mortgagee who holds a mortgage on real property which is in default and is the subject of an outstanding notice of default, Notice of Lis Pendens, or foreclosure action as of the date of the adoption of this code, shall perform an inspection of the property by December 1, 2022. If the property is found to be vacant or shows evidence of vacancy, the mortgagee shall register the property in accordance with this article, within ten (10) days of the inspection.

**Sec. 61-10. Registration of vacant structure.**

Any owner of property located within the city who has a vacant structure(s) or within 10 days of vacating a structure(s) shall register the property as required by this chapter.

**Sec. 61-11. Required owner and authorized management agent information.**

- (a) Owner(s) of property subject to vacant property registration in the city who reside in Polk County or any county contiguous thereto shall provide the neighborhood service department with a physical address, email address, tax identification number and telephone numbers.
- (b) Owner(s) of property subject to vacant property registration located in the city who reside outside Polk County or any contiguous county shall provide the administrator with their a physical address, email address, tax identification number and telephone numbers and the name physical addresses, email address, tax identification number, and telephone number of an individual over the age of eighteen (18) who shall reside in Polk County or any county contiguous thereto and who shall be designated as the ‘authorized management agent’ responsible for maintenance of the property and for receiving notice and service of process.
- (c) The name of insurance carrier, agent, and contact information.

**Sec. 61-12. Application for a business account for a vacant property.**

- (a) Owners of vacant properties must establish a business account with the City of Des Moines. The business account will allow the owner to manage all properties through this account
- (b) The owner must register all vacant properties as set out in this article.
- (c) Upon purchase of a property that has a current registration the owner shall establish a business account and register the property. The renewal registration will be scheduled on the same schedule as the renewal for the previous owner.
- (d) If the information provided in the business account does not include the information required in section 61-11 of this article a research fee will be charged in the amount set forth in the schedule of fees adopted by the city council by resolution for compensation for staff time in collecting the additional information. Each search for information will result in an additional research fee.
- (e) The owner or registered management agent are required to update any information in the business account and/or vacant property registration that has changed and pay the fee for the renewal of the vacant property registration.
- (f) The owner(s) of the property shall be required to update the business account information anytime a change in information is made, including but not limited to mailing address.

physical address, email information, change in authorized management agent or sale of the property.

**Sec. 61-13. - Parties responsible for compliance.**

- (a) The property owner and/or authorized management agent, as defined in this article, shall comply with all provisions of this article, including but not limited to, maintenance of real property for which they are responsible in accordance with the provisions of this article, and in accordance with all other applicable provisions of the city code.
- (b) In all instances, the responsibility of a mortgagee to comply with this article shall be and remain in effect from the date that the mortgagee gives the owner notice of a default under the terms of the mortgage, or files a Notice of Lis Pendens, whichever first occurs, until such time as the subject property is sold or transferred to a new owner or the original owner is put back in possession of the property.

**Sec. 61-14. - Registration of vacant structure.**

For so long as the property remains vacant, or subject to a Notice of Lis Pendens or a foreclosure action, a registration fee shall be due from the owner or authorized management agent, as applicable under the circumstances, each year not later than the fifteenth day of the month following the month in which the original registration was made. The annual registration fee shall be set out in the schedule of fees adopted by the city council for each year it remains registered.

**Sec. 61-15. - Inspection obligations of owner, mortgagee and/or authorized management agent.**

- (a) A property owner or authorized management agent accepting appointment as the agent of the owner, or the mortgagee shall inspect the property not less than monthly to ensure that the property is in compliance with this article.
- (b) If inspection reveals noncompliance,
  - (1) the owner or authorized management agent shall immediately give written notice of the noncompliance to the party responsible for repairs, if not themselves, and
  - (2) provide the information in writing to the neighborhood services department,
  - (3) the owner, authorized management agent, or mortgagee, shall have ten (10) business days to begin the action necessary to bring the property into compliance, and not more than thirty (30) days to complete such action.
- (c) The neighborhood services department shall cause the property to be inspected to determine if the violation has been abated and the inspection fees shall be billed to the owner in the amount set out in the schedule of fees adopted by the city council.

**Sec. 61-16. - Maintenance requirements.**

All exterior features must be maintained in good repair and in sound condition. Additionally, structures must be resistant to water, rodents, and deterioration from weather. Repairs must be made with materials that match the existing structure.

- (1) Structure must include an exterior roof in good repair, including shingles, sheathing, rafters, soffits, and fascia.
- (2) Structure must have a fascia, soffit (in the area around the roof eaves) and soffit screens
- (3) Gable vents/vent opening must be properly screened to prevent access by animals and other pests.
- (4) Exterior walls must be capable of supporting a normal load.
- (5) Exterior walls and other surfaces of any structure must be maintained to resist water and deterioration from weather by application of paint or other protective materials.
- (6) Outermost layer of paint shall not peel or deteriorate to expose underlying layers of paint to the weather.
- (7) Window glass must be maintained in a weathertight and watertight condition.
- (8) Window screens must be in good repair capable of providing ventilation.
- (9) Exterior doors must be weathertight, watertight, in addition to being secure in a position by a locking device in proper working order.
- (10) Porch of any structure must be safe to use, capable of supporting a normal load, be weathertight, watertight, rodent-proof, insect-proof.
- (11) Crawl space opening(s) of a foundation wall must be secured against animals and rodents with screen repairs completed in a workmanlike manner according to standards acceptable in the construction industry.
- (12) Exterior stairs must be capable of supporting the normal load.
- (13) Handrails must be constructed and maintained to conform to the city building code.
- (14) Railings are required for any unenclosed portion of a structure more than three feet above ground level or for any steps containing four or more risers
- (15) All railings must be capable of supporting normal load
- (16) Accessory structure including garages, storage buildings buffer walls, fences, etc. must be maintained in good repair and sound structural condition.
- (17) Windows, doors, and other openings must be in good condition and locked.
- (18) Required landscaping must be maintained to be in compliance with any approved site plan.
- (19) The property shall be mowed, kept clear of weeds, volunteer trees and snow shall be cleared as required by this code.
- (20) Parking areas, driveways and sidewalks shall be kept in good condition as required in this code.
- (21) The premise shall be kept clear of junk, debris, garbage, graffiti, inoperable and unlicensed vehicles.
- (22) The premise shall be kept free of all infestations.
- (23) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of the city code.
- (24) All fire suppression systems must be functioning as intended.
- (25) Other features of the site not specifically listed in this section that when in poor state of repair constitute a threat to the public safety or preclude the reasonable enjoyment of adjacent properties.

**Sec. 61-17. - Security requirements.**

- (a) The owner or authorized management agent shall secure properties subject to this article, so they are not accessible to unauthorized persons.
- (b) Should the city find the structure open and unsecured the property will be immediately boarded as an emergency with no prior notice.
- (c) Broken and/or boarded windows shall be secured with glass by replacement or repair and reglazing.
- (d) Boarded up, broken doors or other entry points shall be repaired in a workmanlike manner.

**Sec. 61-18. Additional authority as to maintenance and security.**

The neighborhood services department shall have authority to require the owner, mortgagee, and property authorized management agent to implement additional maintenance and security measures as may be reasonably required to prevent further decline of the property.

**Sec. 61-19. Notices.**

- (a) Notice to abate a violation shall be given prior to city action to abate a violation, except that in the event of an emergency, such notice as is practical under the circumstances, if any is practical, shall be given; provided, however, that nothing herein shall require notice in an emergency if impractical. If notice to abate a nuisance is given pursuant to this article, said notice shall contain the following information:
  - (1) A description, to the extent possible, of the conditions that constitute the violation;
  - (2) A description of the location of the violation;
  - (3) A statement that the person liable for the presence of the violation must correct the violation within the reasonable time set forth in the notice and in accordance with this article; and
  - (4) A statement that upon failure to comply with this chapter within the time set forth in the notice, the person so notified of the violation shall be deemed liable for the nuisance, and that the city may enter onto the real property and cause the conditions which constitute the nuisance to be abated and assess the costs of abatement against the real property for collection in the same manner as a property tax, following administrative hearing process if a hearing is requested or court action as applicable.
  - (5) If the department elects to follow the administrative hearing procedure set forth in this code, the notice shall also contain a statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for an administrative hearing as set forth in section 61-21 of this article.
  - (6) Notice of costs of abatement shall be given prior to city assessment of such costs. If notice of costs of abatement is given following administrative hearing procedure or emergency action pursuant to this article, said notice shall contain the following information:
  - (7) A statement that upon failure to make full payment as directed in the notice within the time set forth in the notice, the city may assess the costs of abatement against the real property for collection in the same manner as a property tax, following administrative hearing if requested.

- (8) A statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for an administrative hearing on costs of abatement only, as set forth in section 61-21 of this article.

**Sec. 61-20. Service of notice.**

Notices given pursuant to this article shall be served by certified mail and regular mail, postage prepaid, to all persons deemed responsible for the violation, and to all other parties required by law or by departmental policy or procedure to receive such notices, at their last known mailing addresses as shown by the records of the county auditor, and if deemed appropriate by the department director or his/her designee, at their last known mailing addresses as shown by any other available public record. In addition to and concurrently with mailing, notice may be delivered by a peace officer, process server, or any other method deemed appropriate. Failed attempts to locate the person responsible for the violation shall be documented by the department.

**Sec. 61-21. Administrative hearings.**

- (a) Recipients of notices pursuant to this article are entitled to administrative hearings, and administrative hearings shall not be held, if the department elects to solely bring civil action to abate the nuisance and collect costs for abatement rather than to follow the administrative hearing procedure, as stated in the notice.
- (b) Recipients of notices pursuant to this article for which the department elects to follow the administrative hearing procedure, as stated in the notice, may request an administrative hearing as follows:
- (1) Requests shall be made in writing, and either hand-delivered to the city clerk no later than seven (7) calendar days from the date of the notice or sent to the city clerk via regular mail postmarked by official U.S. postal service cancellation and not by postage meter no later than seven (7) calendar days from the date of the notice.
  - (2) Each request for hearing shall contain the name, address, electronic mail (e-mail) address, and daytime telephone number of any person requesting a hearing and of any attorney and/or agent duly authorized by the person who has received the notice to represent him/her at the hearing.
  - (3) Each request for hearing shall set out the requester's basis for the appeal.
  - (4) Failure to request a hearing within seven (7) calendar days from the date of the notice shall be deemed a waiver of the right to contest the validity of the determination of nuisance and/or determination of costs stated in the notice, as applicable. The information set forth in the notice will be deemed to be valid and abatement and/or assessment of abatement costs will proceed as indicated in the notice.
- (c) All administrative hearings requested in compliance with this section shall proceed as follows:
- (1) Shall be scheduled by the city clerk to occur as soon as practical following the date of the notice.
  - (2) Shall be held before a hearing officer and be conducted informally. The department and the person in receipt of the notice may be represented by counsel or duly authorized agent, and examine witnesses, and present evidence.

- (3) The person requesting the hearing shall be notified in writing by regular mail or by electronic mail (e-mail), or by phone of the date and time for the hearing at least three (3) business days in advance thereof.
- (4) For hearings following notice to abate a nuisance, the hearing officer shall either find that a nuisance exists, or void or reverse the notice. If the hearing officer finds that a nuisance exists and evidence of plans for abatement are presented at the hearing by the recipient of the notice, the hearing officer may grant additional reasonable time for the abatement of the nuisance by the recipient of the notice prior to city abatement of the nuisance.
- (5) For hearings following notice of costs of abatement, the hearing officer shall either uphold the amount billed, reduce the amount billed, or waive the costs, and shall not determine any other issue relating to the nuisance abatement including but not limited to any issue that may have been raised at a hearing following notice to abate a nuisance. Any costs not waived by the hearing officer may be assessed against the real property for collection in the same manner as a property tax.
- (6) If an owner(s) or their representative fails to appear at the hearing, they shall be considered in default and the requested relief shall not be granted.
- (d) The determination of the hearing officer shall be in writing, including findings of fact, and is the final administrative decision of the city.
  - (1) Any party aggrieved by the determination of the hearing officer pursuant to this article may challenge whether the officer exceeded proper jurisdiction or otherwise acted illegally by commencing a certiorari action in the district court for Polk County, Iowa. The petition to initiate a certiorari action must be filed within thirty (30) days after the entry of the final determination unless an extension of time is allowed by the reviewing court pursuant to Division XIV of the Iowa Rules of Civil Procedure. The city manager is hereby authorized to initiate a certiorari on behalf of the city when the city manager, in consultation with the city attorney, deems it necessary and appropriate.
  - (2) The filing of an action in the district court challenging the determination of the hearing officer does not automatically stop the city from taking action pursuant to such determination. Unless the city has been served with an order from the district court directing otherwise, the city may proceed with enforcement of a determination.
- (e) Request for an administrative hearing does not stay an action by the city for alternative relief as allowed by law.

#### **Sec. 61.22. Nuisances enforced by civil action.**

Notices pursuant to this article for which the department elects to proceed by civil action shall be served in the manner set forth in section 61-20 of this article and shall contain all information set forth in section 61-19 of this article as well as a statement that the city may file a civil action and seek a court order relating to the existence, abatement, and recovery of abatement costs of the nuisance.

#### **Sec. 61-23. Emergency actions.**

If the department determines that a nuisance exists which constitutes an emergency requiring immediate abatement, the city may perform any emergency action necessary to abate the nuisance without prior notice or abatement hearing.

**Sec 61-24. Renovation agreement.**

- (a) Any maintenance items which cannot be completed within this time because of weather constraints or extraordinary circumstances not of the owner(s) or authorized management agents making they may request an extension of time.
- (b) An owner(s) or authorized management agent may make a request accompanied by the fee set forth in the schedule of fees adopted by the city council by resolution, for an extension that is specific to the structure or premise and must show that:
- (c) Strict compliance with this chapter is impractical; and
- (d) The extension does not violate the intent and purpose of the Municipal Code; and
- (e) At the administrator's discretion, proof of financial ability to complete the repair(s) may be requested and must be provided by the owner(s) or authorized management agent prior to approval.
  - (1) Extensions of time will be entered into by the owner(s) or authorized management agent and the administrator through an executed renovation agreement.
  - (2) Upon execution of a renovation agreement, a temporary rental license will be issued which will expire upon the date set for completion of the repairs as set out in the agreement.
  - (3) An owner(s) or authorized management agent may appeal a denial of an extension pursuant to section 61-21 of this article.

**Sec. 61-25. Civil actions; alternative relief.**

- (a) Any person who fails to perform an act required by this chapter or who commits an act prohibited by this chapter shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of the Municipal Code.
- (b) Proceeding with an administrative hearing, civil action, or emergency action as authorized in this chapter does not preclude the city from seeking alternative relief from a court in the same action or as a separate action, including but not limited to an order for abatement, injunctive relief, or authorization to make repairs.
- (c) In addition to other remedies set forth in this chapter, when it is determined by the administrator that a nuisance exists and/or that a person is a habitual violator, the city may file a civil action in the district court seeking an order enjoining the person from further violation of this chapter on real property owned or controlled by such person or real property where such person acts as an agent, tenant, or lessee of any residential dwelling, commercial establishment and/or real property within the city. The city may further request that upon entry of the injunction the court allow the city to abate further violations without notice and/or seek an order of contempt.

**61-26. Right of entry.**

The administrator is authorized to enter at reasonable times onto and into open unobstructed property and structures to inspect, and a property owner or occupant is required to allow such inspection. If entry onto real estate for the purposes described in this chapter is refused, the administrator may pursue a municipal infraction and/or obtain an administrative search warrant as provided by law to gain entry onto the real estate for the purpose of inspection or otherwise as provided by law.

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

FORM APPROVED:



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Judy K. Parks-Kruse  
Assistant City Attorney



Roll Call Number

22-1478

Agenda Item Number

74

Date September 12, 2022

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, as heretofore amended, by enacting Chapter 61, relating to the Vacant Property Registration Ordinance",

(Council Communication No. 22-395)

presented.

Moved by Sheumaker that this ordinance be considered and given first vote for passage. Second by Gatto.

FORM APPROVED:

(First of three required readings)

Judy K. Parks-Kruse
Judy K. Parks-Kruse
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, SHEUMAKER, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL (7 yeas).

CERTIFICATE

I, LAURA BAUMGARTNER, 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.

J. M. Franklin Cowie Mayor

Laura Baumgartner City Clerk