



Date August 7, 2023

APPROVAL OF NEIGHBORHOOD SERVICES DEPARTMENT JUDGMENT LIEN AND SPECIAL ASSESSMENTS RELEASE POLICY AND PROGRAM

WHEREAS, the City of Des Moines inspects and seeks abatement of public nuisance structures under Chapter 60, Article III – Public Nuisance Code, of the Des Moines Municipal Code; and

WHEREAS, the City incurs inspection, legal, and demolition costs while enforcing the Public Nuisance Code, and those costs due for fees, fines, penalties, and other costs are imposed upon the owner(s) and may be assessed against the property; and

WHEREAS, unpaid costs the City incurs related to enforcement of the public nuisance code are collected as a special assessment, personal judgment, or any other collection measure deemed lawful and appropriate; and

WHEREAS, the aforementioned collection measures may create legal encumbrances against a person or property, especially in cases where a building was demolished through the public nuisance action; and

WHEREAS, special assessments and judgment liens placed against a property and that exceed the market value of the property may prevent redevelopment; and

WHEREAS, nonprofit developers have identified opportunity for collaboration with the City to abate public nuisance properties and identified the cost of demolition as a significant barrier to intervention; and

WHEREAS, in order to provide consistent process for judgment lien and special assesment release and demolition assistance requests, the Neighborhood Services Department has developed a policy and criteria focused on supporting redevelopment of properties that were previously the subject of a public nuisance action.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of Des Moines, Iowa, that:

1. The Judgment Lien and Special Assessments Release Policy and Program (the “Policy”), attached hereto as “Exhibit A” and on file with the City Clerk’s Office, is hereby adopted and effective immediately.
2. The Neighborhood Services Director or their designee is authorized to implement the Policy and execute necessary documents, as approved by the Legal Department.
3. The Neighborhood Services Director or their designee is directed to periodically review the Policy; make minor updates or revisions to the Policy; and present substantive changes in Policy content to the City Council for consideration and approval.



Roll Call Number

Agenda Item Number

36

Date August 7, 2023

(Council Communication No. 23-375)

Moved by _____ to adopt.

Second by _____

FORM APPROVED:

/s/ Gary D. Goudeock Jr.
Gary Goudeock, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
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

DRAFT Judgment Lien and Special Assessments Release Policy

Purpose: The City of Des Moines will accept applications to have City judgment liens and special assessments waived on a property as part of a rehabilitation plan to save existing dwelling or building stock or redevelopment of lots for infill projects. Though not the exclusive purpose, a priority of the policy, also referred to as the Program, is to allow redevelopment of vacant lots cleared through the Blitz on Blight Program.

For non-profit developers, the City will also accept applications for the City demolition of public nuisance structures owned by non-profits with the capacity to redevelop the property.

Eligible Properties: The following categories of *residential* properties may be eligible for consideration of judgment lien and special assessments release:

- A vacant lot that is the subject property of City judgment lien and/or special assessments from a public nuisance action and demolition action.
- A property with a residential structure in need of rehabilitation that is prevented from a transition in ownership and rehabilitation because either the judgment lien and/or special assessment significantly contribute to a gap in the rehabilitation budget.
- Non-profit only: A public nuisance property with a structure still in need of demolition and either the cost of the demolition or the active legal proceedings prevent the non-profit's redevelopment of the site.

Eligible Applicants: Individuals, businesses, and nonprofit organizations are eligible to apply. Must be either the owner, contract purchaser, or have a signed purchase agreement for the eligible property.

Program Exclusions:

The following are *not* eligible for the Program.

1. An applicant that was the title holder, contract buyer or legal interest holder when the judgment lien and/or special assessment was levied, or the public nuisance case was declared.
2. Applicant must not:
 - a. Have been referred to the Housing Appeals Board for cases within the previous one-year period for any addresses they manage, have an ownership interest in, or are owned by an entity in which Applicant has any ownership interest..
 - b. Have other structures subject to enforcement action by the Neighborhood Inspection Division that have not entered into a renovation agreement.
 - c. Have collectively been issued three or more junk and debris notices that resulted in a City special assessment or judgment lien within the last 36 months on any addresses they manage, have an ownership interest in, or are owned by an entity in which Applicant has any ownership interest.

- d. Be in arrears on property taxes in Polk County for any property they have an ownership interest in or that is owned by any entity in which Applicant has any ownership interest.
 - e. Have an ownership interest in or have an interest in a corporation holding title to more than two incomplete projects that have been approved for the Program.
 - f. Have current rehabilitation projects for which they have not pulled permits as required by City code.
 - g. Have failed to complete a prior project per a development agreement with the City.
3. Staff reserves the right to reject applications based on other factors deemed noncompliant for either the property or applicant with Program goals.

Timing of Request: The judgment lien and special assessment release process is not meant to replace due diligence and good title work at the time of acquisition. Requests should be made prior to the time of acquisition by a new owner. On a case-by-case basis, the City may consider releases when an owner meets all the Program requirements and already owns the property. To evaluate the appropriateness of the request, City staff will require information about the title work and due diligence completed prior to acquisition and the circumstances surrounding the property. See below for a checklist of required documentation that demonstrates due diligence.

Form of Judgment Lien and Special Assessments Release Assistance: After review of application and property research by City, the amount of judgment lien and special assessment release will be determined by the City in its sole discretion. This can include full release, partial release, or other negotiated terms with the applicant. Some judgment lien and special assessment releases are completed through conversion of City judgment liens and special assessments into a forgivable loan secured against the subject property.

Non-profit developers: In review of the terms of the sale, should the prior owner show net proceeds, then the City may demand partial or full payment of any outstanding lien amounts. The agreed-upon release of special assessments and judgment lien will be completed without a secured forgivable loan to the nonprofit.

In addition to special assessments and judgment lien releases, non-profit developers may request assistance in the City demolition of a structure that is a public nuisance. Similar to the judgment lien release process, the request must take place prior to securing ownership, will include documentation surrounding the possible terms of acquisition, and requires review to set agreed-upon terms from the City at the point of property acquisition.

For-profit developers: In review of the terms of the sale, should the prior owner show net proceeds, then the City may demand partial or full payment of any outstanding lien amounts. The City will consider partial releases in the following circumstances:

- Judgment Lien amount of \$24,999 and below.
 - The agreed-upon release of special assessments and judgment lien will be completed without a forgivable loan, but the requirement of a) a developer agreement describing the scope of work to complete the project and b) documentation of a plan within application to invest at least two times the release in the rehabilitation or redevelopment of the property.
- Judgment Lien amount of \$25,000 and above.
 - The loan has 0% interest and is forgiven at the time of closing of resale of the property. The City will work with the developer's construction loan to subordinate the City loan. To finalize the loan forgiveness, development budget actuals and a closing statement will be required at time of subsequent sale after completion of the project. As a condition of the terms of judgment lien and special assessment forgiveness and the forgivable loan, developer fees will be capped at 20% profit of the total development budget. If the developer fees are above 20%, additional repayment of the loan will be required.

Owner-occupied and rentals: In the event that the property will not be resold within 90 days of project completion, the loan has 0% interest and is forgiven when a certificate of occupancy has been issued or the Neighborhood Services Director or their designee has determined the project to be complete. City will work with the owner's construction loan to subordinate the City loan.

Side-yards and green space: These will only be considered if the property is determined to be unbuildable. The loan has 0% interest and is forgiven upon combining the lots with the Polk County Auditor and addressing all zoning and land use issues identified within the applicant's site plan.

Review: Applications will be reviewed on a rolling basis. The Property Redevelopment Specialist will serve as the compiler of applications. Neighborhood Services Department staff will review applications and determine terms for release.

Contracts and Administration: The Judgment Lien and Special Assessments Release Program will be administered by the Neighborhood Services Department, with direction from the City Manager.

The City of Des Moines and any selected Judgment Lien and Special Assessments Release Program applicant will enter into a contract stating the terms of the Program and all terms applicable to the redevelopment of the subject property.

Any contract executed under the Judgment Lien and Special Assessments Release Program shall require the Program participant to comply with all applicable laws, ordinances, regulations, and codes as required by the City.

Project Completion: All projects must be completed within three years to remain in good standing for future applications. A project receiving financial assistance of \$25,000 and above in the form of a forgivable loan under the Judgment Lien and Special Assessments Release Program shall be completed within three years of the date of contract execution. If no work on the project has commenced within the contractual timeline, the City may require repayment of the forgivable loan. Additionally, the Program participant shall lose eligibility as outlined above.

Judgment Lien and Special Assessments Release Application:

Every application for Program assistance shall include the following:

1. Completed Program application form detailing the planned use of the property;
2. Appraisal or other information used to determine offer price;
3. Purchase agreement and closing sheet;
4. Title opinion and documentation showing how title defects, other than the City's judgment liens, will be cleared;
5. Proof of financial ability to complete the project;
6. Pre-construction development budget that includes the investment being made in redevelopment or rehabilitation and the anticipated after renovation value;
7. For projects proposing a release of \$25,000 and above, an itemization of actual construction costs will be required at cancelation of the judgment lien, and developer or investor profit cannot exceed 20% of the total development costs without additional payment towards the judgment lien;
8. If City provides assistance in the form of a forgivable loan, Applicant shall maintain liability insurance in a form and amount to be approved by City; and
9. Applicant certification that they are not subject to the Program exclusions listed above. If there are any issues with properties that the applicant believes additional information is important to know, communicate this at time of application.

An application shall be considered as received by the City only if the City deems it to be complete, which includes support documentation as City staff deems necessary.

Application Process:

Applications for judgment lien or special assessment releases will be turned into the Property Redevelopment Specialist within the Neighborhood Services Department either in hard copy or electronic form. Please submit all materials to:

Tess Cody, Property Redevelopment Specialist
Neighborhood Services Department, City of Des Moines

602 Robert D. Ray Drive
Des Moines, IA 50317
515-283-4777
tdpcody@dmgov.org

Electronic submission is preferred. Hard copies submitted in person can be delivered between 8:00 AM and 4:30 P.M., Monday through Friday.

The Property Redevelopment Specialist will review submitted application materials for completeness. If no other supporting documentation is requested, the Property Redevelopment Specialist shall notify the applicant in writing of the City's determination within 30 calendar days of the applicant's complete submission. Determination could include:

- Acceptance and initial terms of potential release; or
- Denial of the application for cause; or
- Request for further information.

Approvals of Releases and Terms:

Many partial releases can be completed administratively, though some judgment liens and/or special assessments approved by staff will require additional approval by the City Council. Applicants will be notified if their project meets the threshold requiring Council action and the associated timeline. Typically, the following protocol will be utilized:

Type of Release and Terms	Approval
Partial release of judgment against property, but lien continues against other property or individual.	<ul style="list-style-type: none">• Administrative approval, no council action required.
Judgment was only against the property and release would mean no further lien.	<ul style="list-style-type: none">• Administrative approval up to \$50,000 in released lien.• Council action for judgment liens \$50,001 and above to be released.

Appeals: Written appeals of the Judgment Lien and Special Assessments Release Program decisions must be filed with the Neighborhood Services Department Director within 10 days of the date of the City staff's decision(s), identifying the applicant, proposed project, basis/reasons for appeal, and any other information deemed relevant by the appellant. The Neighborhood Services Department Director's written decision to uphold, reverse, or modify the applicable Judgment Lien and Special Assessments Release Program decision(s) shall be the City's final decision.

Chris Johansen, Department Director
Neighborhood Services Department, City of Des Moines
602 Robert D. Ray Drive
Des Moines, IA 50317
(515) 323-8976