

ORDINANCE NO. 13,663

AN ORDINANCE to amend the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 11,804, passed April 20, 1992, and amended by Ordinance No. 13,308, passed March 4, 1996, by repealing Sections 17-85, 17-90, 17-91 and 17-92, thereof and enacting new Sections 17-85, 17-90, 17-91 and 17-92, all 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 Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 11,804, passed April 20, 1992, and amended by Ordinance No. 13,308, passed March 4, 1996, by repealing Sections 17-85, 17-90, 17-91 and 17-92, thereof and enacting new Sections 17-85, 17-90, 17-91 and 17-92, all relating to specified crime property, as follows:

**17-85. DEFINITIONS.**

Unless otherwise expressly stated or unless the context clearly indicates a different intention, the following terms shall, for the purpose of this subchapter, have the following meanings:

**"Bootlegging"** means the illegal sale or service of alcoholic liquor, wine, or beer in violation of chapter 5 of this code or Chapter 123 of the Code of Iowa.

**"Chief of police"** means the person who has the responsibility to supervise and direct the police department as defined by section 2-128 of this code and for purposes of this subchapter may include his or her designee.

**"Controlled substance"** means a drug, substance or immediate precursor as defined by Chapter 204 of the Code of Iowa.

**"Gambling"** means games of skill or chance as defined by Chapter 99B and prohibited by Chapter 725 of the Code of Iowa.

**"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 17-44 of this code or by Chapter 725 of the Code of Iowa.

**"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 is occurring.

**"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.

#### **17-90. SERVICE OF NOTICE.**

A copy of the notice shall be served on the owner or an agent at least twenty (20) days prior to the commencement of any judicial action by the city. Service shall be made either personally or by mailing a copy of the notice by registered or certified mail, postage pre-paid, return receipt requested to each person at his or her address as it appears in the records of the county auditor. In the event that notice is impossible to be served as set out above, a copy of the notice may be posted at the property if ten (10) days have elapsed from the service or mailing of the notice to the owner and no response or reply has

been received by the city from the owner during that period of time.

The failure of any owner to receive actual notice of the determination of the chief of police shall not preclude future proceedings under this subchapter.

#### **17-91. ADMINISTRATIVE APPEAL.**

(a) Upon receipt of a notice of specified crime property as set out in sections 17-89 and 17-90 above, the owner of record may challenge such notice by filing a request for an administrative hearing. Such request shall be in writing and filed with the city clerk or his or her designee within 10 days of the service of the notice of specified crime property. A copy of this subchapter shall be available at the city clerk's office upon request.

(b) Failure to request a hearing within such time period or to attend a scheduled hearing, shall be deemed a waiver of the right to such a hearing.

(c) Upon filing of a request for an administrative hearing, further judicial action pursuant to this subchapter shall be stayed pending the outcome of the administrative hearing.

#### **17-92. CONDUCT OF HEARING.**

(a) The hearing 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 pre-paid 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 when the declaration of specified crime property was made pursuant to section 17-88. 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 subchapter 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 subchapter 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 subchapter.

(d) The decision of the hearing officer shall be final.

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