

ORDINANCE NO. 15,405

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 amending Section 26-303, and by adding and enacting a new Article IV of Chapter 58, Historical Preservation, Sections 58-69 and 58-70, relating to historic review of proposed demolition.

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, as heretofore amended, is hereby amended by amending Section 26-303, and by adding and enacting a new Article IV of Chapter 58, Historical Preservation, Sections 58-69 and 58-70, relating to historic review of proposed demolition, as follows:

Sec. 26-303. Demolition of buildings and structures.

- (a) Permit required; expiration. A permit shall be required for demolition of buildings and structures in accordance with the following:
 - (1) No person shall commence the work of demolishing any building or structure until a permit authorizing such work has been obtained from the building official. Every demolition permit issued under the provisions of this section shall expire by limitation and become null and void if the work authorized by such permit is not commenced within seven calendar days from the date of issuance, or if the work authorized by such permit is not completed within 30 calendar days of the date of issuance, unless, because of the extensiveness of the project, the building official deems at the time of issuance a longer period for either commencement or completion should be granted.
 - (2) Any permittee holding an unexpired demolition permit may request in writing an extension of time within which the demolition work may be commenced or completed. If such request contains good and satisfactory reasons showing that circumstances beyond the control of the permittee have prevented timely commencement or completion of the work, the building official may extend the applicable expiration date.
 - (3) Except as provided in this section, a demolition permit that has expired shall be null and void, and before any demolition work is subsequently commenced a new permit therefore shall be obtained. The fee for such permit shall be at the same rate as the original permit.
 - (4) If a demolition permit to remove an unsafe building or a building that is the subject of a public nuisance action has expired, the building official shall order the prompt removal of such structure, in accordance with all requirements of this article. All of

the costs attendant to this action, including administrative costs, shall be either assessed against the property or collected from the owner unless otherwise directed by the city council.

- (b) *Application for permit.* Application for a permit to demolish a building or structure shall be made to the building official. The applicant shall provide the following information:
- (1) The name and address of the person in responsible charge of the work.
 - (2) The street address and legal description of the property on which the building or structure is located.
 - (3) The name and address of the owner and, when appropriate, his or her legal agent in responsible charge of the property.
 - (4) Overall dimensions, number of stories and materials of construction of the building or structure to be demolished.
 - (5) A plan showing areas to be protected by fences, barricades, covered walkways, or other protective devices, and details of construction for such devices.
 - (6) Location of the site where the demolition debris is to be discarded.
 - (7) Approval from other affected city departments or governmental agencies when deemed necessary by the building official and any special conditions or restrictions relating thereto.
 - (8) For demolition by explosives, the applicant shall furnish the information required in this subsection and shall furnish information regarding the person who will be conducting the demolition by explosives and shall furnish plans showing how the building or structure will be prepared for demolition, the type and amount of explosives to be used, and a detailed plan showing what safety precautions will be taken to protect persons and property.
 - (9) A permit for the demolition of a building or structure by the use of explosives may be issued by the city council subject to the following conditions:
 - a. The applicant for a permit must demonstrate to the city council the need for demolition by explosives rather than demolition by conventional means and must demonstrate that demolition by explosives can be safely conducted at the specific location requested.
 - b. The building official, fire chief and police chief shall review the application and submit their opinions to the city council concerning whether or not the demolition can be safely conducted, together with any recommendations they may have.
 - c. The applicant shall provide a certificate of liability insurance for personal injuries, death and for property damage in an amount not less than \$1,000,000.00 naming the city as an additional named insured party. The certificate shall provide that the coverage shall not be cancelled or changed without ten days' prior written notice to the city. The city council may require additional insurance coverage when the hazard appears greater than normally expected and may also in such instance require the posting of a bond acceptable to the city in an amount commensurate with the severity of the hazard. The bond shall provide that the applicant shall well and satisfactorily perform the demolition. The bond shall be for the benefit of the city and any person who is injured or damaged by the failure of the applicant to satisfactorily perform the demolition.

- d. The applicant shall agree to indemnify and hold harmless the city from all losses resulting from damages or injuries caused by the applicant or the applicant's employees, servants or agents arising out of the use of explosives in demolition.
 - e. The applicant shall pay the city in advance for reasonable expenses that will be incurred by the city in furnishing necessary security and police protection in the vicinity of the demolition site.
 - f. The applicant shall observe all applicable federal, state and local laws in the course of the demolition, including but not limited to the following:
 - 1. The applicable provisions of the city fire prevention code relating to the storage, transportation and use of explosives.
 - 2. The rules and regulations of the United States Environmental Protection Agency relating to the demolition of buildings or structures containing asbestos materials or other hazardous air pollutants.
 - g. The applicant shall meet all other requirements of this article relating to the demolition of structures or buildings; provided, however, that if a conflict exists between the provisions of this subsection and other sections of the city Code, the provisions of this subsection shall be deemed to be controlling.
 - h. The applicant need not obtain an obstruction permit as provided in section 26-304 of this article to block off portions of public property within an appropriate distance of the demolition site, provided that the obstruction is for less than a 24-hour period and provided that the obstruction is for security purposes in connection with the use of explosives. However, the applicant shall be required to obtain an obstruction permit to use public property in the cleanup operations following the detonation of explosives.
 - i. The city council shall at any time have the authority to impose additional requirements and safety precautions in the interest of the public health, safety and welfare.
- (10) Such other information as shall be reasonably required by the building official or community development director, including all information necessary to conduct historic review pursuant to chapter 58, article IV.
- (c) *Disconnection of sewer and water.* No permit to demolish shall be issued until it has been established that existing sewer and/or water services have been properly disconnected and approved.
- (d) *Bond required.*
- (1) Before a permit is issued to remove a building which has been ordered removed as a public nuisance and which period of time granted by the city or by the courts for removal or other remedial action by the applicant or other party of interest has expired, the applicant may be required to post a cash bond equal to the estimated costs of the removal of the building and the disconnection of the existing utility services. If the applicant does not remove the building at the time the permit expires at a time specified by the building official, such bond shall be forfeited and used toward the costs of the city to remove it.
 - (2) If the building is removed by the applicant prior to the time the permit expires, such bond shall be returned to the applicant. A return of the bond does not exempt the

applicant from further assessments to the real estate for costs that have occurred prior to the issuance of the permit.

(e) *General requirements.*

- (1) The building official shall have the authority to impose at any time reasonable requirements and safety precautions in the interest of public health, safety, and welfare which, in his or her opinion, are commensurate with the severity of hazard, either demonstrated or anticipated, provided that such requirements may be appealed to and reviewed by the board of appeals at the request of the affected party.
- (2) In addition, the following shall be met:
 - a. The discharging, loading, or dumping of building materials from any building shall be accomplished in such manner as to minimize the creation of dust and scattering of debris. Materials shall not be dropped by gravity to any point lying outside the building walls except through an enclosed chute, unless such materials are dust free and the height of drop is at least equal to the horizontal distance to the nearest property or barricade line. Where such horizontal distance is not available and practical necessity dictates the dropping of relatively large masses of materials, the building official may approve appropriate protective measures designed to provide protection from danger equivalent to that afforded by the otherwise required horizontal setback; provided, however, that in all cases such materials shall be handled in a manner approved by the air pollution control division of the county health department.
 - b. When necessary to protect the public health, safety, or welfare, every demolition project shall be barricaded, fenced, lighted, and signed with warning and/or directional signs in a manner approved by the building official. The building official may also require the presence of approved security guards or flag persons. Such barricades, fences, lights, and signs as may be deemed necessary by the building official for protection of the public shall be maintained after completion of the demolition work until such time as the site is cleaned of all debris and all excavations, basements, and depressions in the ground are restored to grade and rendered harmless.
 - c. Adequate precautions shall be taken to ensure that procedures or conditions relating to the demolition work do not constitute a fire hazard. If, in the opinion of the fire chief, a fire hazard exists or is likely to exist, he or she may order the cessation of work or require that appropriate protective measures approved by him or her be taken.
 - d. All streets, alleys, and public ways adjacent to the demolition site shall be kept free and clear of any rubbish, refuse, and loose material resulting from the demolition work unless an obstruction permit for such space has been obtained.
 - e. Demolition of structures subject to public nuisance action shall include removal of all footing and foundation materials unless otherwise approved by the building official.
 - f. Upon completion of the demolition work, the site shall be left in a clean, smooth condition. Inorganic building rubble, sand, clean earth, or other approved fill material may be used to fill excavations, basements, and depressions, provided that the top 12 inches shall be clean earth or its equivalent in terms of surface

smoothness, free from dust, and cleanliness. If the surface is to be used for the parking of vehicles, it shall be constructed as required in chapter 134 of the city Code pertaining to zoning.

- 3) No permit to demolish shall be issued until a grading permit, waiver of grading permit, or a solid waste disposal site license is obtained for any location within the city where the demolition debris is to be discarded.

ARTICLE IV. HISTORIC REVIEW OF PROPOSED DEMOLITION

Sec. 58-69. Purpose.

It is declared as a matter public policy that the review and consideration for the potential continuation of use and historic documentation of buildings and structures of historic, cultural or architectural significance is in the interest of the health, prosperity, safety and welfare of the public. The purpose of this article is to provide adequate opportunities for the review and exploration of viable alternatives to demolition and the completion of a historical record of buildings and structures that contain features of architectural merit and are historically significant. This article shall not serve to preclude or cause any delay to the procedures for historic district or landmark designation contained elsewhere in this chapter.

Sec. 58-70. Historic review.

- (a) An application made under section 26-303 for a demolition permit of all or part of a building or structure and an application made under the plumbing code (chapter 26, article XI) for a plumbing permit for the disconnection of sewer service in preparation of such demolition, on property that is not otherwise subject to the requirement of a certificate of appropriateness under sections 58-31 or 58-62, shall be subject to the procedures for historic review set forth in this article.
- (b) The community development director or his designee shall conduct an initial review within ten days of the submittal of the completed application for a demolition permit or related plumbing permit. The community development director shall notify members of the landmark review board of the application for proposed demolition of an entire single-family building that is, or is greater than, 80 years old, an entire building other than single family that is, or is greater than, 50 years old or an entire building that appears to contain features of architectural merit. Following such initial review, issuance of a demolition permit in accordance with section 26-303 and related plumbing permit in accordance with the plumbing code shall be authorized if it is determined that the building or structure proposed for demolition constitutes any of the following:
 - (1) Is a single-family building or structure less than 80 years old or a building or structure other than single-family less than 50 years old and contains no features of architectural merit.
 - (2) Is an imminent threat to the public health or safety.
 - (3) Is limited to a deck, porch, steps, stoops or similar structural element.
 - (4) Is limited to a building addition that is less than 80 years old and contains no features of architectural merit.

- (5) Is a single-family building that is, or is greater than, 80 years old or a building or structure other than single-family that is, or is greater than, 50 years old, contains no features of architectural merit and the community development director has determined it is not historically significant.
- (c) If, following initial review, the community development director has determined that the building or structure proposed for demolition is a single-family building or structure that is, or is greater than, 80 years old or a building or structure other than single-family that is, or is greater than 50 years old and/or contains features of architectural merit, is deemed historically significant but does not meet the criteria for landmark designation set forth in section 58-58, community development department staff shall be directed to work with the owner of the building or structure to determine, within 30 days, whether any alternatives to demolition are feasible. Such alternatives to be considered may include, but are not limited to, the following:
- (1) Rehabilitation of the building or structure with the assistance of federal or state tax incentives or other private financial assistance.
 - (2) Adapting the building or structure to a viable new use.
 - (3) Finding a new owner who is interested in purchasing, preserving and rehabilitating the building or structure.
 - (4) Incorporating the building or structure into the owner's plans for redevelopment of the site.
 - (5) Assisting the owner in finding an alternative site for its proposed redevelopment.
 - (6) Moving the building or structure to an alternative site.
- If the community development department staff and the owner of the building or structure do not reach an agreement on a feasible alternative to demolition, then with the guidance of community development department staff, the owner will be required to document and photograph the exterior and interior of the building or structure and provide the city with a copy of such documentation and photographs. The owner will further be required to salvage for re-use as many fixtures and as much material as possible from the building or structure. Provided that owner has conducted the documentation and salvage to the satisfaction of the community development director, then issuance of a demolition permit in accordance with section 26-303 and related plumbing permit in accordance with the plumbing code shall be authorized.
- (d) If, following initial review, the community development director has determined that the building or structure proposed for demolition is a single-family building or structure that is, or is greater than, 80 years old or a building or structure other than single-family that is, or is greater than 50 years old and/or contains features of architectural merit, is deemed historically significant and meets the criteria for landmark designation set forth in section 58-58, the application for demolition or related plumbing permit shall be referred to the city council for review at a regularly scheduled city council meeting held within 20 days of the date of referral. The owner of the building or structure and, if applicable, any designated legal agent shall be provided notice of the time and location of city council review by certified mail and by regular mail at the addresses provided in the application for demolition permit. At such meeting, the city council will consider oral and written comments from all interested parties and determine whether or not to refer the application for proposed demolition or related plumbing work to the landmark review board for further study and review. If the city

council determines not to refer the application to the landmark review board, then with the guidance of community development department staff, the owner will be required to document and photograph the exterior and interior of the building or structure and provide the city with a copy of such documentation and photographs. The owner will further be required to salvage for re-use as many fixtures and as much material as possible from the building or structure. Provided that the owner has conducted the documentation and salvage to the satisfaction of the community development director, then issuance of a demolition permit in accordance with section 26-303 and related plumbing permit in accordance with the plumbing code shall be authorized.

- (e) If the application for proposed demolition of the building or structure is referred by the city council to the landmark review board, the landmark review board shall be directed at regularly scheduled and/or special meetings of the board to work with the owner of the building or structure to determine, within 90 days, whether any alternatives to demolition are feasible. Such alternatives to be considered may include, but are not limited to, the following:
- (1) The building or structure can be considered for landmark designation.
 - (2) Rehabilitation of the building or structure with the assistance of federal or state tax incentives or other private financial assistance.
 - (3) Adapting the building or structure to a viable new use.
 - (4) Finding a new owner who is interested in purchasing, preserving and rehabilitating the building or structure.
 - (5) Incorporating the building or structure into the owner's plans for redevelopment of the site.
 - (6) Assisting the owner in finding an alternative site for its proposed redevelopment.
 - (7) Moving the building or structure to an alternative site.

If the landmark review board and the owner of the building or structure do not reach an agreement on a feasible alternative to demolition, then with the guidance of community development department staff, the owner will be required to document and photograph the exterior and interior of the building or structure and provide the city with a copy of such documentation and photographs. The owner will further be required to salvage for re-use as many fixtures and as much material as possible from the building or structure. Provided that owner has conducted the documentation and salvage to the satisfaction of the community development director, then issuance of a demolition permit in accordance with section 26-303 and related plumbing permit in accordance with the plumbing code shall be authorized.

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

FORM APPROVED:

Lawrence R. McDowell, Deputy City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Laura Baumgartner, Chief Deputy City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 15-1633), passed by the City Council of said City at a meeting held September 28, 2015 signed by the Mayor on September 28, 2015 and published and provided by law in the Business Record on October 16, 2015. Authorized by Publication Order No. 9324.

Laura Baumgartner, Chief Deputy City Clerk