

MEMORANDUM
August 7, 2014

To: Jim Moore, Mayor
From: Truman H. Jordan, Chair of Planning & Zoning
Re: Demolition Ordinance

At the July 2014 meeting of the Planning & Zoning Commission the commission voted 4 – 0 to recommend to City Council that they adopt the enclosed Demolition Ordinance.

The ordinance represents the work of a committee appointed by the previous council. It was presented to us by Guy Booth who was a member of that committee. The ordinance was brought to us for our review after it had been reviewed by the city attorney, Bob Hatala.

The Planning & Zoning Commission feels that this ordinance is consistent with our current zoning ordinance which requires a building permit before a structure can be erected in Mount Vernon. The proposed Demolition Ordinance will require a demolition permit before an erected structure can be torn down.

I would be happy to discuss this recommendation in greater detail if you think that would be helpful.

cc

Mike Beimer
Matt Siders
Marsha Dewell
Guy Booth

ORDINANCE#11-3-2014

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF MOUNT
VERNON, IOWA, BY ADDING PROVISIONS PERTAINING TO PROCEDURES FOR
DEMOLITION REVIEW**

Be it enacted by the City Council of the City of Mount Vernon, Iowa:

SECTION 1. NEW SECTION. The Code of Ordinances of the City of Mount Vernon, Iowa, is amended by adding a new Section in Chapter ____, numbered ____, entitled "Demolition Permits", which is hereby adopted to read as follows:

- (1) **Demolition Permit Required.** No building can be demolished without a permit. No permit for the demolition of a building shall be issued other than in conformity with the provisions of this ordinance, as well as in conformity with the provisions of other laws and ordinances applicable to historic preservation and to the demolition of buildings.

- (2) **Application for Permit.** An application for demolition shall be made only by the person, partnership, corporation or realty trust which is the legal deed holder thereof at the time of such application. The applicant must comply with all federal, state and local regulations pertaining to the disposal of hazardous wastes. The application must be made on a form provided by the City of Mount Vernon and must clearly state the following at a minimum:
 - a. How the anticipated final disposition of material will be accomplished in as sustainable manner as possible;
 - b. How any hazardous materials contained within the structure proposed for demolition will be determined and remediated;
 - c. Identifying all material, such as basements, sidewalks, utilities materials, etc., which will not be removed from the property as part of the proposed demolition; and
 - d. A plan and schedule for accomplishing the future use of the planned use of the property upon which the proposed demolition is to occur.

No permit for demolition of a building shall be granted until plans for use or development of the site after demolition have been filed with the Zoning Administrator and found to comply with all laws pertaining to the issuance of a building permit. All approvals necessary for the issuance of such a building permit or certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

- (3) **Fourteen Day Wait.** The Zoning Administrator shall forward a copy of each application for a demolition permit to the Historic Preservation Commission (Commission) for determination whether the building which is the subject of such application is a historically significant building. A fourteen (14) day wait period shall commence on the date following the date the Commission receives the application for a demolition permit from the Zoning Administrator. Demolition is prohibited during the fourteen day wait period.

- (4) **Initial Review and Determination.** The Historic Preservation Commission shall review the application for demolition at a public meeting of the Commission within the fourteen (14) day wait period. The Commission shall make an initial determination whether the building is a historically significant building using the standards set forth in the then current US Secretary of Interior standards for treatment of historic properties. The website for the standards is: www.nps.gov/tps/standards.htm . The Commission shall make written findings regarding whether the building is historically significant and recommend the grant or denial of the permit.

If during the fourteen (14) day wait period, the Commission makes an initial determination that the building is a historically significant building, the Zoning Administrator shall be so advised, and no demolition permit or building permits for new construction shall be issued unless and until a final determination has been made that the building is not a historically significant building or an exception applies. If the Commission makes the determination that the building is not a historically significant building the Administrator shall be advised and the permit will be issued provided all other applicable building regulations have been met.

- (5) **Final Determination.** After an initial determination by the Commission that any building is a historically significant building, it shall so advise the applicant and the Zoning Administrator, and a sixty (60) day demolition review period will be imposed. A demolition permit will not be granted and demolition is not permitted during the sixty (60) day review period. The sixty (60) day demolition review period starts on the date the Commission mails its decision via ordinary mail to the applicant. The Commission shall hold a public hearing prior to making a final determination that any building is a historically significant building. Notice shall be provided as follows:

Notice by Posted Sign: A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than eighteen (18) inches in height and twenty-four (24) inches in width with a white background and black letters not less than one and one-half (1 ½) inches in height. Such posted notice shall be so placed upon such premises that is easily visible from the street and shall be so posted at least ten (10) days before the date of such hearing through the date of the hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearing.

Notice by Publication: At least ten (10) days before the date of hearing, the City Clerk shall have published in a newspaper having a general circulation in the City of Mount Vernon a Notice of the time, place and subject matter of such hearing.

No demolition permit or building permit for new construction or alterations on the premises shall be issued after the date of a determination that a building is a historically significant building unless an exception as provided for in subsection (6) applies.

During the sixty (60) day demolition review period, the Commission shall review all construction, demolition, or alteration that affects the exterior architectural features, including the landscape of the property.

The Commission will work with the applicant to have a historic survey done on the property, if necessary, and to determine if any of the following option or alternatives to demolition are feasible:

- A. The building can be considered for landmark designation.
- B. Rehabilitation of the building with the assistance of State or Federal tax incentives or other private financial assistance.
- C. Adapting the building to a new use.
- D. Finding a new owner who is interested in preserving/rehabilitating the building.
- E. Incorporating the building into the owner/applicant's redevelopment plans.
- F. Assisting in finding a different location for the owner's redevelopment.
- G. Moving the building to an alternative location.
- H. Salvaging building materials if the structure is to be demolished.
- I. Documenting the building prior to the issuance of a demolition permit.

The Commission shall make its findings in writing. Upon completion of the review, the Commission will advise the applicant and Zoning Administrator in writing whether a demolition permit can be issued. The Applicant may file an appeal on the record of the Commission's finding and the acts of the Zoning Administrator to the Board of Appeals of the City of Mount Vernon for final determination due to such findings or acts improperly applied the Ordinances of the City of Mount Vernon, were in excess of jurisdiction, were biased, were an abuse of power, considered facts that should not have been considered or did not consider facts that should have been considered. The Board of Appeals shall not review such appeal as a de novo appeal. An appeal of the decision of the Commission must be taken no later than 14 days after the decision is made and the applicant notified. Notification will be by ordinary mail. Notification is complete upon depositing the decision in the U. S. mail ordinary delivery with the appropriate postage.

- (6) **Exceptions.** Exceptions from the demolition review process will be afforded if an economic hardship can be demonstrated or a structure is considered an imminent threat to the health and/or safety of the public as determined by the Zoning Administrator. The burden of proof that an economic hardship exists is the applicant's responsibility. The Zoning Administrator will forward a copy of the application to the Historic Preservation Commission for a hardship exemption, along with the applicant's request for exemption from the demolition review process. The Historic Preservation Commission shall review the request for exemption, and shall respond to said application at its earliest convenience, but not more than fourteen (14) business days after receipt of the application by the Commission. Criteria for determination of an economic hardship include:
- A. The basis to establish economic hardship for an income producing property, including commercial uses or rental units, shall be that a reasonable rate of return cannot be obtained from a property that retains its historic features or structures in either its present condition or if its features or structures are rehabilitated.
 - B. Economic hardship in regard to a non-income producing property shall be found when the property owner demonstrates that the property has no beneficial use such as property used as a single-family dwelling or for an institutional, religious or governmental not-for-profit use in its present condition or if rehabilitated.
 - C. Demonstration of an economic hardship shall not be based on or include any of the following circumstances:
 - 1. Willful or negligent acts by the owner.
 - 2. Purchase of the property for substantially more than market value.
 - 3. Willful failure to perform normal maintenance and repairs.
 - 4. Willful failure to diligently solicit and retain tenants.
 - 5. Willful failure to provide normal tenant improvements.
 - D. If the Zoning Administrator has not received a decision from the Commission on the request for exemption within the fourteen (14) business day wait period, then the Zoning Administrator shall notify the Chairperson and Secretary of the Commission that a demolition permit will be issued seven (7) days after the date that this notice has been provided to the Chairperson and Secretary, unless prior to the expiration of seven (7) days, the Commission issues a written decision on the application for a hardship exemption for the demolition permit.
 - E. If the Commission fails to approve or deny the demolition permit at the end of the sixty (60) day review period, the application will be determined to have been granted and demolition can proceed accordingly.

VIOLATION AND PENALTIES

- A. Any person, firm or corporation violating or failing to comply with, or violating any terms or provisions of this chapter shall be subject to the penalty provisions of the ordinances of the City of Mount Vernon, Iowa.

- B. Failure to comply with the application process or failure to have a demolition permit pursuant to this Ordinance constitutes irreparable harm warranting injunctive relief to stop the demolition of any potentially historically significant building.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudicated invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

First reading on the _____ day of _____, 2014.

Second reading on the _____ day of _____, 2014.

Third and final passage on the _____ day of _____, 2014.

James L. Moore, Mayor

ATTEST:

Sue Ripke
Assistant City Administrator/Clerk

I certify that the foregoing was published as Ordinance # _____ in the Mount Vernon Sun on the _____ day of _____, 2014.

Sue Ripke
Assistant City Administrator/Clerk