

# **Protecting Historic Buildings in Urban Core Neighborhoods**

Tools within Iowa's Code

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## ***Introduction***

In 2001, Charlie Brooke’s campaign to win Davenport’s mayoral election led to a dramatic change in how Iowa cities addressed the problem of abandoned properties. His vision led to important changes to Iowa’s code which empowered municipalities to address the problem of abandoned residential structures within their jurisdictions. The most significant of these changes, known as 657A.10A—“Abatement by Rehabilitation of Abandoned or Unsafe Buildings”—dramatically changed the speed with which municipalities could deal with this issue. The power vested by it appears to be unique to Iowa. It has been embraced by some cities and left unutilized by others, including the city where it was drafted.

With population growth averaging less than 3% per decade since 1920, including one devastating decade where the population dropped by 4.7%, Iowa and her cities, including Davenport, struggle to maintain a balance between upholding the quality of historic housing stock and addressing issues within frequently decaying urban core neighborhoods.<sup>1</sup> In light of its stated purpose and history of its application so far, Iowa Code 657A.10A has potential to assist in preservation of historic properties for municipal governments willing to make use of the power it delivers. Conversely, without sheltering ordinances protecting these properties from demolition, 657A.10A carries with it the risk of exacerbating the loss of historic fabric.

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<sup>1</sup> Attachment 1 “Iowa and US Populations and Growth by Decade 1900-2000” and Thom Hart, in discussion with author, December 4, 2015. Hart is a native of Davenport and the city’s mayor from 1986-1992. His characterization of Davenport’s historic neighborhoods was that they had suffered from disinvestment and redlining for many decades and that the city had employed a “classic urban renewal approach to economic development.” Hart believes that, historically, banks had red lined older neighborhoods. See also Lynn Zerschling, “When Owners Walk Away, Taxpayers Get the Bill,” *Sioux City Journal*, July 10, 2010. Accessed October 15, 2015 at [http://siouxcityjournal.com/news/local/when-owners-walk-away-taxpayers-get-the-bill/article\\_7b90e0ee-2e81-51f4-8d09-77b902fb7e28.html](http://siouxcityjournal.com/news/local/when-owners-walk-away-taxpayers-get-the-bill/article_7b90e0ee-2e81-51f4-8d09-77b902fb7e28.html). The article details the results of disinvestment in the Rose Hill neighborhood, a Sioux City historic district near the city’s old central business district; formerly single family homes were up zoned to apartments and many are now derelict.

In Iowa, local ordinances provide the primary means of protection for historic properties; it is impractical to define an overall state approach to the problem. Furthermore, in the absence of a federal undertaking and National Register listing or determination of eligibility, the procedural protections of Section 106 of the National Historic Preservation Act—the primary federal historic preservation law—rarely apply. For these reasons, this paper will examine how four Iowa cities—Burlington, Waterloo, Dubuque and Davenport—have chosen to address the abandoned property issue in different ways including the use of 657A.10A. This paper will also review other steps these cities are taking to safeguard fabric within historic neighborhoods and explore in depth how Davenport has struggled with the challenge for more than forty years.

## ***Part 1- History***

### **657A.10A: Perspective and Genesis**

Attorney Charlie Brooke lost his first run for mayor of Davenport in 1999. During his second bid in 2001, he focused on the city’s nuisance and abandoned buildings. Brooke grew up in an historic turn-of-the-century neighborhood near Davenport’s riverfront, playing along the city’s streets with his brother Duncan. As the old urban core neighborhoods<sup>2</sup> continued to decline, he became concerned that young Davenport families would not have the same options to

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<sup>2</sup> See Attachment 2. For the purposes of this paper, Davenport’s urban core neighborhoods are defined as an area bounded on the south by the Mississippi River, on the north by Locust Street 18 blocks above the river, on the west by historic neighborhoods running to the city boundary and on the east to Jersey Ridge Road, the border between the Village of East Davenport and the McClellan Heights neighborhood. This area was the historic center of Davenport. The Mississippi River runs east to west at Davenport, so what would typically be west in most Mississippi River towns is north in Davenport. The 1836 city developed around a small central business district on the river in both Davenport and what was a separate town of East Davenport. Residential areas were generally immediately north of the central business districts, filled in the areas between the two cities, and also spread west of the CBD of Davenport. During the 19<sup>th</sup> and early 20<sup>th</sup> century, the city began to growth north of this area toward Locust. After WW II, suburbs expanded further out to the north, east, and west.

enjoy the city as he and his brother had. The challenges facing the city's older neighborhoods became a central theme in his campaign.<sup>3</sup>

Other residents of these neighborhoods were also focused on the vacant properties surrounding their homes. Jo Souder Vandercar, a resident of Davenport's west side Taylor Heights, had been engaged in finding solutions for a large, derelict 1897-era school that included the right owner and an appropriate reuse if it was to be saved. She joined other neighborhood residents in opposing plans to build a neighborhood of affordable homes, "Cobblestone Terrace," using federal ROSE funding.<sup>4</sup> She advocated for using those funds, instead, to rehabilitate existing abandoned or vacant properties.

Pat Egly lived on the east side of town. As an active member of Lincoln Neighbors, she and her husband became involved in 1998 when a group formed to explore construction of new low-income housing in nearby neighborhoods including one proposal for construction of a 150-unit low income apartment building. Egly felt this approach was another example of warehousing the poor and supported an alternative plan that would rehabilitate existing housing stock.<sup>5</sup>

These millennial efforts did not mark the first time citizens came together to revitalize the city's urban core neighborhoods. That work began in the 1970s after the area had already suffered from decades of neglect. In a familiar story repeated in many cities, single family homes

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<sup>3</sup> Duncan Brooke, in discussion with author, November 11, 2015. Charlie Brooke died in 2007. Duncan Brooke, his brother, who had helped Brooke restore a property in the Village of East Davenport, provided insight into the source of his brother's motivation surrounding the city's abandoned housing issue. Also, Tom Saul, "Davenport Targets Properties in the Inner City," *Quad City Times*, May 22, 2004.

<sup>4</sup> Jo Souder Vandercar, "Existing Housing Stock Worthy of Investment," *Quad City Times*, February 24, 2004 and Jo Souder Vandercar, in discussion with author, October 31, 2015.

<sup>5</sup> Egly, Pat, in discussion with author. October 28, 2015. Egly is a longtime community activist.

were up zoned to multi-family dwellings; absentee landlords bought up properties, further destabilizing neighborhoods being depleted of owner-occupied residences. Banks refused to grant mortgages; many homes were sold under contract by owners who otherwise could not sell them.<sup>6</sup>

A combination of factors beginning in the 1970s resulted in a massive city effort to complete historic surveys and create National Register districts and individually listed properties. Most were located south of Locust Street—the historic urban core.<sup>7</sup> Between the initial effort that ended in the early 1980s and additional surveys in the years that followed, the city emerged with seventeen separate National Register historic districts; their contributing properties along with individually listed outliers totaled more than 1,600 buildings and structures. It was the largest collection of registered buildings in the state, accounting for over one-half of the state's National Register-listed properties.<sup>8</sup>

This effort was underway in other Iowa cities, too. Unfortunately, as historic surveys kicked into high gear, Iowa ran headlong into one of the darkest financial periods in its history. The impact of the farm crisis that began in the 1970s continue well into the 1980s. Prices for

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<sup>6</sup> Hart Interview.

<sup>7</sup> See Marion Meginnis, “Intent and Outcome: A River City Retrieves Its Past,” December 3, 2014. In this paper submitted for an Introduction to Historic Preservation Course, the author explored the elements surrounding Davenport’s National Register process that took place in the mid-1970s and early 1980s during a time when citizens fought repeated efforts by the Iowa Highway Commission/Iowa Department of Transportation to build a freeway from I-80 north of downtown through the old urban core and connecting to the Centennial Bridge. The proposal generated a 4F review and contentious public meetings. The first project was never built. By that point, preservationists had begun to understand how the federal process could slow down road proposals and surveys of historic properties were underway. When new proposals to create high speed freeways in and around the central business district and nearby neighborhoods were introduced, preservationists lobbied for review. All of the highway proposals failed. During the same period, Davenport CDBG funds were used to hire the only historic planner employed by an Iowa city to complete an intensive National Register survey and listing.

<sup>8</sup> “List of Iowa National Register Sites,” History Survey Collection, Box 2, Richardson-Sloane Collection, Davenport Public Library.

agricultural products fell and over extended farmers lost their land; in one year, 300,000 farmers defaulted on their loans.<sup>9</sup> Large and small farm-related factories and industries closed their doors, putting thousands out of work. In Waterloo, employment at the John Deere plant shrank from 15,000 to 5,000. Legacy firm Rath Packing shut its doors.<sup>10</sup> Waterloo's population dropped from a high of population of 75,000 in 1980 to 68,000 today.<sup>11</sup> The Iowa/Illinois Quad Cities, of which Davenport is one community, had been a powerhouse of farm machinery production. The area lost 18,000 jobs. Davenport's population dropped by 8,000 people from 1980 to 1990.<sup>12</sup> As city populations dwindled, the demand for housing stock diminished. Thom Hart, elected mayor in 1986 in the middle of the farm crisis, voiced concerns about abandoned buildings within Davenport's urban core neighborhoods. At the time he took office, the city supported demolition "at a fever pitch."<sup>13</sup> A proponent of historic preservation, who believed that "demolition is a total failure for everyone,"<sup>14</sup> he also had made economic development and addressing abandoned properties a central part of his campaign. He appointed a Problem Structure Task Force that worked for the next three to four years to survey existing derelict residential and commercial buildings to try to determine what should be saved among the many distressed properties. A Demolition Review Board he established to review demolition requests prior to action being

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<sup>9</sup> Iowa Public Television. "The Farm Crisis." 1:29:50. Posted September 6, 2013. [http://www.iptv.org/iowastories/story.cfm/farm-crisis/10632/frc\\_20130701/video](http://www.iptv.org/iowastories/story.cfm/farm-crisis/10632/frc_20130701/video)

<sup>10</sup> Dave Zellhoefer, in discussion with author, November 11, 2015. Zellhoefer is the city attorney for Waterloo and responsible for filing the city's 657A.10A petitions.

<sup>11</sup> "Total Population for Iowa's Incorporated Places: 1850-2000," accessed at <http://www.iowadatecenter.org/datatables/PlacesAll/plpopulation18502000.pdf>

<sup>12</sup> "Total Population for Iowa's Incorporated Places: 1850-2000."

<sup>13</sup> Hart interview.

<sup>14</sup> Ibid

taken<sup>15</sup> approved removal of many buildings, but, at the same time, properly mothballed several hundred. One tactic was boarding windows with stenciled panels that replicated the look of window sashes, constructed in such a way as to make them resistant to removal by “hoodlums and antiquers.”<sup>16</sup> Invoking the spirit of the Community Reinvestment Act, Hart sat down with banks to establish the Central City Lending program to offer loans to prospective homebuyers. All the local banks stepped up to the plate with a multi-million-dollar fund offering terms that were flexible for those with less robust financial assets.<sup>17</sup> Other funders like the Riverboat Development Authority, which distributes funds from a Davenport casino, gave housing grants to not-for-profit housing agencies.<sup>18</sup>

In the early 1990s, the city, still under the leadership of Hart, battled its way to approval of its first Historic Preservation Commission (HPC).<sup>19</sup> Davenport’s historic preservation ordinance granted the commission the power to approve demolition permits for any National Register-listed or locally landmarked property or district. HPC denial could only be overridden by a majority vote of the city council.<sup>20</sup>

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<sup>15</sup> Hart Interview. Hart believes that Iowans felt that their farm economy made them “recession-proof,” believing “everyone has to eat.” Prior to Hart, the city had never engaged in economic development.

<sup>16</sup> Fritz Miller, in discussion with author, November 11, 2015. Miller was a member of the Hart task force appointed by Mayor Hart and knowledgeable regarding historic constructions and preservation techniques. He was later appointed to the city’s Historic Preservation Commission.

<sup>17</sup> Hart interview.

<sup>18</sup> Saul, “Davenport Targets Properties in the Inner City.”

<sup>19</sup> Hart interview.

<sup>20</sup> Davenport Historic Preservation Ordinance, 17.23.120. Accessed December 5, 2015 at <http://clerkshq.com/default.ashx?clientsite=davenport-ialocation> and Hart interview.

Davenport's single residential local historic district, a smaller area within the National Register Hamburg Historic District, was not approved until 1999.<sup>21</sup> After three terms as mayor, Hart lost his reelection bid in 1991. Without a champion, his task force and loan program did not survive.<sup>22</sup>

### **Davenport's Abandoned Housing Task Force Inspires 657A.10A**

Charlie Brooke announced his 2001 campaign standing in front of two derelict west side buildings. He won that race. When he took office in 2002, he appointed an Abandoned Housing Task Force to develop solutions to the problem. After hearing Jo Vandercar speak at a meeting opposing Cobblestone Terrace, he walked up to her, handed her a card, and said, "Call me." Pat Egly met Brooke at a housing rally in LeClaire Park. Both she and Vandercar ended up on the task force.<sup>23</sup>

By 2004, the group had identified 154 buildings it believed fit the "Abandoned" criterion, most in the urban core including some located in National Register Districts. The task force debated the root causes of the problem. Was it that the spot solution approach of the past hadn't made a dent in the problem? Was it created by too much focus on housing for the homeless at the expense of reestablishing single family ownership? Absentee landlords were seen as contributing to the blight. Inability of cities to easily take possession of buildings and land was another problem. Eventually, the city created the HAPPEN program. HAPPEN was a local grant program that set aside dollars to rehabilitate dozens of houses identified on the task

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<sup>21</sup> Davenport Register of Historic Properties and Local Landmarks (updated September 28, 2012)," Accessed at <http://www.cityofdavenportiowa.com/department/board.php?structureid=442>. Landmarking of the local district was approved on November 1, 1999. Over 50% of the building owners in the specified area had to approve the local landmarking process prior to vote by the HPC and City Council.

<sup>22</sup> Ibid.

<sup>23</sup> Vandercar and Egly interviews.



force list as single family properties. HAPPEN grants matched 40% of a building's rehabilitation costs, up to \$30,000.<sup>24</sup> The program had no income restrictions. Potential homeowners as well as contractors looking to rehab and flip houses were encouraged and welcomed. Within the Hamburg Historic District, five houses were rehabilitated. Three of those in the local district also made use of Iowa's historic tax credit, requiring rehabilitation that met the Secretary of Interior's Standards for Rehabilitation.

As the task force continued its work, the city began looking for legal solutions to the conundrum of how to deal with abandoned properties. Then-Assistant City Attorney Tom Warner drafted the language in 2003 for what would become, with a few tweaks by legislators, section 10A, an amendment to Iowa's code dealing with abatement of "Abandoned and Nuisance Properties."

Warner found precedent for the new code in *Bennis v. Michigan*, a 1996 lawsuit, in which the Supreme Court of the United States found that property used during criminal activity was legally subject to forfeiture, or, in other words, subject to seizure. In *Bennis*, the forfeited property was a car used by one of its owners for a tryst with a prostitute. During the *Bennis* journey through the courts, *The Palmyra* case was also repeatedly cited to support the government's case. This legal finding dating to the 19<sup>th</sup> century recognized the right to seize ships without compensation when they had been used for illegal privateering, regardless of whether the owners were aware of that use.<sup>25</sup> Warner's logic was that nuisance properties were,

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<sup>24</sup> "Program Has \$430,000 Available for New Projects," *Quad City Times*, August 13, 2006. As the program evolved, HAPPEN also approved adding other houses to those already on the HAPPEN list.

<sup>25</sup> Melissa N. Cupp, *Bennis v. Michigan: The Great Forfeiture Debate*, *Tulsa Law Review*, Volume 32 Issue 3, 1997 and Taline Festekjian, "Civil Forfeiture and the Status of Innocent Owners after *Bennis v. Michigan*," *Boston College Law Review*, Volume 37, Issue 4 Number 4, July 1, 1996.

in essence, committing a crime by violating state and local housing codes relating to public safety. As such, their potential forfeiture through petitions to the court using 657A.10A action was not a taking.<sup>26</sup>

Warner also tapped into the ancient English common law concept of escheat whereby abandoned real property should not remain ownerless but return to the state. While primarily used when property owners die without a will or a known heir, the concept has also been used in dealing with blighted properties.<sup>27</sup>

Instead of writing a new city ordinance, which he feared would be more easily overturned if subjected to a legal challenge, Warner sought the power of the state enabling code for the abandoned building initiative. With the original language drafted,<sup>28</sup> Warner and the Abandoned Housing Task Force enlisted the help of local state representatives and senators to bring the bill to the attention of the legislature. After undergoing a few changes to its language, the bill was introduced through the Ways and Means Committee in 2004. It quickly garnered bi-partisan support, moving quickly through the House and Senate. Warner believes its easy passage was because most Iowa towns faced this issue and none had found an expedient solution.<sup>29</sup> Governor Tom Vilsack signed the new legislation into law on May 2004.<sup>30</sup>

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<sup>26</sup> Warner, Tom, in discussion with author, October 19, 2015. Warner is now the City Attorney for Davenport.

<sup>27</sup> Ferland, Carrie, "What Is an Escheat Property?" Accessed November 12, 2015 at <http://homeguides.sfgate.com/escheat-property-2990.html>

<sup>28</sup> Warner Interview. Warner no longer has copies of the drafted language.

<sup>29</sup> Warner, Tom, Email to author, November 12, 2015.

<sup>30</sup> Saul, "Davenport Targets Properties in the Inner City."

## ***Part 2- Application of the Code***

### **657A.10A: How It Works**

Chapter 657A includes sections that cover the legal definition of abandoned buildings, a long middle section on receivership, and the powerful 10A section that gives municipalities the right to petition the court for outright ownership of such properties without compensation to the owner. It details a list of criteria that the court should consider when defining a property as abandoned, but does not require that all the criteria be met. It requires the city to notify all parties with an interest in a building—owners, lien holders, banks holding mortgages—and sets a window of sixty days for the initial petition period. At the end of sixty days, the court schedules a date for a follow up hearing. At the hearing, a judge determines who will own the property. Parties with a legal interest may appear and protest the city’s request. If the city’s suit prevails, the city is awarded the property free and clear of any claims, liens, or encumbrances. The ruling may be appealed to a higher court. As originally written, 657A.10A applied only to residential buildings. In 2015, the legislature expanded the statute to include commercial properties.<sup>31</sup>

### **Iowa’s Struggle with Abandoned Housing**

To date, it appears that 657A.10A has been used sparingly to address housing issues related to individually designated historic buildings such as local landmarks, or those within historic districts.<sup>32</sup> Because this application has been limited, it is necessary to explore existing scenarios under which 657A.10A might play a role in these types of interventions in the future.

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<sup>31</sup> Attachment 3 “Abandoned or Unsafe Buildings-Abatement by Rehabilitation, §657A.2.” Accessed December 1, 2015 online at <https://www.legis.iowa.gov/law/statutory>.

<sup>32</sup> Dubuque has filed a petition in an upcoming case. This instance is discussed within “Use of 657A.10A by Iowa Cities,” on page sixteen of this paper.

Every old neighborhood is not an historic one nor will age bring such local, state or national landmark designation. However, given traditional American growth patterns—also found in Iowa cities—of centrally located central business districts and residential areas emerging adjacent to them, most of the state’s local and National Register-listed historic districts are located in either old commercial centers or in nearby historic residential neighborhoods rather than in outlying rural areas.<sup>33</sup> While reinvestment might be visible along the streets of these designated districts, the view a few blocks away is often not as rosy. In 2014, Iowa listings in the National Register database included 209 historic districts in 91 cities—typically multiple listing sites—plus over 2,000 individually listed buildings and sites.<sup>34</sup> Listing in the National Register alone, however, carries with it no guaranteed protection from demolition.<sup>35</sup>

One cause of Iowa’s challenges with abandoned and vacant properties may be found in the state’s population trends. Iowa’s population between 1900 and 2000 increased by only 31%.<sup>36</sup> In 1900, the populations of Kentucky, Wisconsin, Indiana, North Carolina, Georgia, and Tennessee were similar to Iowa’s figure of 2.2 million residents. Iowa’s 36.5% growth rate between 1900 and 2010 pales in comparison to these states where growth ranges from a low of 102.1% in Kentucky to a high of 403% in North Carolina.<sup>37</sup> Given Iowa’s continued slow growth

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<sup>33</sup> The author, using a 2014 data set from the National Register site, reviewed Iowa National Register Historic District listings-excluding individually listed properties. Of those, 156 districts were commercial districts or in historic residential neighborhoods and 62 districts were locations such as parks, colleges, religious campuses, bridges, archeological sites, rural landscapes, farmsteads with limited and sometimes no buildings. The 156 “urban” districts contained an overwhelming number of all certified historic structures in the state.

<sup>34</sup> National Register database accessed September 23, 2014. Exclusive of “boundary extension” districts and inclusive of residential and commercial districts.

<sup>35</sup>The National Historic Preservation Act, 54 U.S.C. §§ 300101-307101(e) does provide potential protection for historic properties through its Section 106 review process. However, Section 106 review is only triggered when federal dollars are used to effect demolition.

<sup>36</sup>Attachment 1, “Iowa and US Populations and Growth by Decade 1900-2000.” Compiled by author.

throughout the 20<sup>th</sup> century, urban core areas continue to be highly susceptible to disinvestment, resulting in issues with derelict or abandoned properties both inside and outside designated historic areas.<sup>38</sup>

The proportion of housing stock in Burlington, Waterloo, Dubuque and Davenport that is over 50 years old—the age threshold for listing properties in the National Register—is greater than 50%. In Burlington, that percentage is 67.4%. All four cities exceed the statewide average of 42.5%. Almost 54% of the housing stock in Davenport, a city of about 100,000, was built before 1960.<sup>39</sup> How does the age of Davenport’s housing stock compare to the age of housing stock in cities of similar size in other states? The percentage of housing stock built before 1960 in six comparison cities in Kentucky, Wisconsin, Indiana, North Carolina, Georgia, and Tennessee averaged only 35.1%.<sup>40</sup> Aging housing stock often goes hand in hand with nuisance or abandoned properties.<sup>41</sup>

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<sup>37</sup> Attachment 2, Comparisons based on U.S. Census tracts for Wisconsin, Indiana, Tennessee, Kentucky, North Carolina and Georgia...all states with populations similar in size to Iowa in 1900. Since much of the western United States was still under development in 1900, states west of the Mississippi as well as eastern states with large metropolitan areas or highly industrialized bases such as Massachusetts, were excluded from the comparison. Compiled by author from data accessed online at <http://www.infoplease.com/ipa/A0004986.html>

<sup>38</sup> Zerschling, “When Owners Walk Away, Taxpayers Get the Bill.” Sioux City’s experience, as detailed in this 2010 article, is an example of the results of these lingering issues.

<sup>39</sup> Attachment 4. United States Census Bureau, “American Factfinder,” [http://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml). In their interviews, staff in the surveyed cities quoted figures higher than those found in the Census website.

<sup>40</sup> Ibid.

<sup>41</sup> Sarah Galvin, “Rehabilitation Rehab through State Building Codes,” *Yale Law Review*, p. 1756. Galvin sources a 2002 speech by Richard Moe, President of The National Trust, to the U. S. Congress of Mayors, who stated that 60% of buildings within historic districts were in census tracts with a poverty level of 20% or more.

Also see Jeffery Fraser, “The Cost of Blight,” *Pittsburgh Quarterly*, Fall 2011, accessed at <http://www.pittsburghquarterly.com/index.php/Region/the-cost-of-blight/All-Pages.html>. Fraser’s article covers issues in Pennsylvania cities, extreme examples of the blight created by abandoned properties that include eroding a city’s tax base and the values for nearby homes as well as stymying neighborhood revitalization efforts. See also Attachments 5 and 6 which cross index Davenport’s low income census tracts and the location of its historic districts.

## Use of 657A.10A by Iowa Cities

To date, very little use of 657A.10A has focused on historic preservation despite the fact that most historic districts are located in the old urban core areas of Iowa's cities where the issue of abandoned or nuisance properties are an ongoing concerns.<sup>42</sup> Three cities that have employed it—Burlington, Waterloo, and Dubuque—have used the code to address the general issue of abandoned buildings. By contrast, Davenport, where the code was drafted, has never used it. Failure to find the right test case, concerns that property rights advocates would react negatively, and the city's unwillingness to become the owner of derelict buildings are all cited as impediments.<sup>43</sup>

Burlington has been using 657A.10A since 2007. Its activity increased after the 2008 economic downturn and foreclosure crisis. In one instance, city staff entered an abandoned property and found the house keys and abstract on the kitchen table, as if waiting for their arrival. The owners had walked away from a mortgage they could no longer pay.<sup>44</sup> Since 2007, Burlington has used 657A.10A to gain possession of about 100 properties. City attorney Scott Power estimates that of that number, about 30 were demolished and 70 were resold. Earlier in the process, neighbors were sources of information about abandoned buildings. Now, employees, such as garbage collectors, are the city's best eyes on the street for identifying

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<sup>42</sup> Saul, "Davenport Targets Properties in the Inner City," and Stephen Elliot, "Davenport to Demolish Abandoned Properties," *Dispatch/Argus QC Online*. October 21, 2015. Accessed December 1, 2015 at [http://www.qconline.com/news/local/davenport-to-demolish-abandoned-properties/article\\_85789624-9abb-5a62-9e43-3681eb303bec.html](http://www.qconline.com/news/local/davenport-to-demolish-abandoned-properties/article_85789624-9abb-5a62-9e43-3681eb303bec.html). In both Saul's 2004 article on the passage of 657A.10A and Elliot's 2015 article on city council approval for demolition of 33 Davenport buildings, references are made to housing issues south of Locust.

<sup>43</sup> Warner interview and Bruce Berger, in discussion with author. Berger is the Assistant City Manager for Davenport.

<sup>44</sup> Power, Scott, in discussion with author, October 5, 2015. Attorney Power is in private practice but has worked with the city of Burlington's city attorney for 30 years and handles the legal aspects of the city's 657A.10A filings.

potential problem properties. City residents appear to be pleased to see neglected property issues addressed and there have been no complaints about property rights.<sup>45</sup>

When using the code, the city staff's strategy is to have an end game for any targeted property. They ascertain interest in redevelopment of a building or find a nearby owner interested in a side lot if demolition is the likely outcome. This approach eliminates the problem of long term city ownership derelict buildings. Out of the 100 properties awarded to Burlington that have gone through the process, only two lots are still owned by the city—a success rate of 98%.<sup>46</sup>

Once Burlington's city staff have identified a viable property, the city's standard procedure is to petition the court to transfer ownership. During a sixty-day period that follows, the city contacts all parties with a claim against the property. When the sixty days are over, the city requests a hearing which is typically set within thirty days. Few owners or lien holders have opted to appear at the hearings. Owners who appeal to the court for more time to address property issues are rarely successful in convincing the judge to take this course of action. While parties do have the right to appeal the decision of the court, few have exercised that right.<sup>47</sup>

Within a few weeks of gaining possession, Burlington's Economic Development Director is assessing its next steps. If that is demolition, a local not-for-profit salvage group harvests

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<sup>45</sup> Eric Tysland, in discussion with author, October 9, 2015. Tysland has worked with Burlington for twelve years, first as city planner and now as Community Development and Parks Director. See also Power interview.

<sup>46</sup> Power interview.

<sup>47</sup> Power and Tysland interviews, and "City of Council Bluffs, Iowa v. Anita Harder," <http://law.justia.com/cases/iowa/court-of-appeals/2009/9-680.html> and "City of Waterloo v. Brambridge HLS," <http://caselaw.findlaw.com/ia-supreme-court/1381229.html>. *Harder* focused on the definition of abandoned for a house damaged by fire and uninhabitable but for which the owner was paying taxes and performing routine maintenance. *Brambridge* challenged a municipality's right to not pay compensation to tax lien holders at the conclusion of successful 657A.10A court proceedings. In both cases, the law was upheld.

elements of the building. If the next step is resale, a sign is posted in the yard, information is added to the city's website along with forms and instructions, and a growing list of interested redevelopers is contacted. The property is auctioned at City Hall with the mayor acting as auctioneer. Opening bids can be as low as \$500, or begin higher for more substantial properties. Recent sales have gone as high as \$16,500. Since 2010, the city has generated \$275,000 from the resale of 657A.10A properties.<sup>48</sup>

Comparing the condemnation process to a “hammer” and 657A.10A to a “magic wand,” 28-year Waterloo city employee Rudy Jones remembers how nuisance properties were handled prior to the code change. Then the city's contract compliance officer and intimately involved with city demolition contracts, he estimates that 90% of all demolition action resulted from owner neglect.<sup>49</sup> Key Planner Chris Western describes the cycle of court orders, tax certificate sales, city mowing and snow removal, leading ultimately to demolition on a site still not controlled by the city because it had never taken possession.<sup>50</sup> Waterloo began using 657A.10A soon after it was enacted, conducting a survey of properties and creating a target list of 230 properties that fit the “abandoned” legal definition. In the early years of 657A.10A, most of the houses were too derelict to rehabilitate. Waterloo's City Attorney Dave Zellhoefer estimates that the city has taken possession of 100 properties using 657A.10A, buildings he describes as “vermin-filled with rotting floors and basketball sized holes in the roof.”<sup>51</sup> All were demolished

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<sup>48</sup> Tysland interview.

<sup>49</sup> Rudy Jones, in discussion with author, October 8, 2015. Jones is currently Community Development Director for Waterloo, Iowa.

<sup>50</sup> Western, Chris, in discussion with author, October 9, 2015. Western is a Key Planner/Brownfield Coordinator for the city of Waterloo.

<sup>51</sup> Zellhoefer interview.



and ninety were in the city's old urban core neighborhoods. Today, Waterloo is starting to catch houses before they are beyond saving, and in several cases have reached out to preservationists for their help and expertise in next steps.<sup>52</sup> The city still spends \$150,000 a year to demolish houses. The difference with 657A.10A is that the city owns the ground upon which they sit, controlling redevelopment options.<sup>53</sup>

In Dubuque, Assistant City Attorney Crenna Brumwell did not use 657A.10A until 2014, but now has done so in ten instances. The first 657A.10A-based case dealing with Dubuque historic properties is scheduled to go to court in January 2016. The city has filed a petition on behalf of two vacant duplexes in the Jackson Park Historic District that have become derelict. So far, the owners have been unresponsive to city offers to purchase the property or directives to remediate the issues.<sup>54</sup>

### ***Part 3 Other Legal Options***

#### **Inside Iowa**

Prior to 2004, Iowa cities had other alternatives for dealing with abandoned properties. Available but generally avoided by all surveyed cities due to the costs involved were the condemnation or eminent domain routes which required payment of a property's appraised value and left the city as owner of a derelict property. Davenport made an exception in 2014 when it stepped in to condemn a highly significant property, The Lambrite-Iles-Petersen House (c. 1857) in the Hamburg Historic District. Members of the neighborhood association formally requested the city to take action fearing loss of the building after the house became uninhabitable, lost its

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<sup>52</sup> Zellhoefer interview.

<sup>53</sup> Jones and Western interviews.

<sup>54</sup> Crenna Brumwell, in discussion with author, November 11, 2015. Brumwell has worked for Dubuque since 2006.

utilities, and required the city to step in with emergency roofing and boarding of entry points.<sup>55</sup> Ultimately, the city chose the condemnation route over use of 657A.10A.<sup>56</sup> It later sold the property which is now undergoing restoration.

Invoking a city's police powers to address severely dilapidated buildings is another recourse.<sup>57</sup> The city does not take possession of a property, but declares it a dangerous nuisance. The building is either demolished by city crews or via contracts with private firms. The cost of demolition is then assessed against the owner. Cities rarely recoup these demolition costs; since the city does not take title to the building, it does not own the lot beneath it. Frequently, these vacated lots are resold through the county tax sale process,<sup>58</sup> continue to be uncared for, and require city maintenance for mowing and snow removal. The property is then reassessed for these costs and the cycle often continues until the properties are again abandoned by purchasers and end up on as part of a county sale of land and properties.<sup>59</sup> This process can take years to complete. Davenport continues to use this method of dealing with abandoned buildings.<sup>60</sup>

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<sup>55</sup> Letter dated April 6, 2012 to Davenport mayor and city council from Gold Coast-Hamburg Historic District Association asking city to intervene on behalf of the property. The resolution had been voted on in a membership meeting on March 31, 2012.

<sup>56</sup> Warner interview. While the owner had walked away from the property, he lived in the neighborhood and kept his dog tied up on the parcel. He also continued a long time habit of letting his taxes go to tax lien sale, then buying them back before he legally forfeited the property.

<sup>57</sup> Tim Huey, in discussion with author, November 17, 2015. Huey is the Scott County Planning and Development Director. In this capacity, he also deals with properties purchased at tax certificate sales. And Chris Western interview. Western discussed the legal means cycle used to demolish buildings in Waterloo prior to 657A.10A.

<sup>58</sup> Iowa counties conduct tax lien sales each year for properties with delinquent taxes; this process is more fully described in the following paragraph.

<sup>59</sup> Huey interview.

<sup>60</sup> Thirty of the houses in Davenport were slated for demolition in 2015 using this method. Three are in city ownership.

Since 2004, cities in Iowa have had the option to gain control of abandoned properties whose tax bills have gone unpaid.<sup>61</sup> The language was drafted by Davenport city attorney Tom Warner at the same time he wrote the language for 657A.10A.<sup>62</sup> Iowa counties sell tax liens on these properties at annual sales. Purchasers generally expect the original owner to redeem the delinquent taxes at an interest rate of 2% a month, or 24% a year. If the owner fails to redeem the taxes within two years, the tax lien holder may take title to the property. What frequently happens with abandoned properties is that tax lien holders, many of whom are out of town financial institutions, do not opt to pay the second-year taxes and assessments for weed cutting and snow removal continue to pile up. The properties are resold at the next tax lien sale and the deterioration continues.<sup>63</sup>

The 2004 change in the code allowed cities to intervene and impel owners of liens for properties that have been declared abandoned to allow the city to purchase the liens from them. That has the potential of putting cities in control of such properties earlier in the cycle of decay.<sup>64</sup>

The option of receivership was added to Iowa's code in 1985 as part of Chapter 657A. Receivership is a process administered by the courts that gives parties the right to make repairs as well as eventually sell a property without granting ownership. It is time consuming, requiring a number of specific steps, planning, and court oversight at each step. Most staffers interviewed

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<sup>61</sup> Iowa Code §446. Accessed December 12, 2015 at <https://www.legis.iowa.gov/docs/code/446.pdf>

<sup>62</sup> Warner interview and Diane Sterner and Alan Mallach, "The Abandoned Properties Rehabilitation Act. New Tools for the Fight Against Blight," *New Jersey Municipalities*, March 2005, 68-72. New Jersey also conducts tax lien sales. Changes to New Jersey law in 2004 permitted municipalities to intervene in tax lien sales in the same manner. Attorney Warner was aware of this legislation when he drafted 657A.10A and the changes to Iowa's tax lien sale code language.

<sup>63</sup> Huey and Western interviews.

<sup>64</sup> Iowa Code §446.

about receivership said their cities rarely or never used this tool, seeing it as cumbersome and unwieldy.<sup>65</sup> The most telling example is from Dubuque, where the city used this option only once for a case that began in 1988. The city was given receivership in 2000 and was not relieved of ownership until 2015. The owners have appealed to the Iowa Supreme Court, believing they are owed money. The city has no future plans to make use of receivership.<sup>66</sup>

### **Addressing Abandoned Properties in Other States**

Historic properties, abandoned buildings, and quality of housing within old urban core areas are issues not unique to Iowa. To date, the author has uncovered no evidence of legislation with the power of 657A.10A in other states. With this option unavailable, other states turn to different solutions.

Several states, including New Jersey, Maryland, Virginia and Ohio, enable receivership; in Pennsylvania, the same action is called conservatorship. Each state code varies as to who may file and what properties are included. Several require that the receiver abide by historic preservation guidelines when properties are so governed.<sup>67</sup>

An example of the use of receivership in historic preservation can be found among the projects of The Cleveland Restoration Society (CRS) that has used receivership four times in two decades for historic preservation projects. Using mostly pro bono legal services, its intervention

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<sup>65</sup> Attorneys Scott Powers, Burlington; Tom Warner, Davenport; Dave Zellhoefer, Waterloo; and Crenna Brunwell, Dubuque were all asked about the receivership. All felt it was an ineffective solution for dealing with abandoned housing and none had made use of the option for city suits.

<sup>66</sup> Brunwell interview.

<sup>67</sup> Melanie Lacey, "Preservation through Vacant Property Receiverships," Accessed September 11, 2015 at <http://blog.preservationleadershipforum.org/2015/09/08/preservation-through-vacant-property-receiverships/#.VfM1WuqFOVN>.

has included partial or full rehabilitation.<sup>68</sup> The most recent example is partial rehabilitation of one of sixteen Van Swearingen Model Homes built in 1922 in the Tudor Style in along Shaker Heights' Cortland Boulevard. The house was foreclosed and had been gutted of its metal pipes and its kitchen and suffered severe damage from a leaking roof. The bank wanted to demolish it to avoid meeting the city's strict requirements for rehabilitation prior to sale. In its pursuit of saving the home, CRS spent ten months to prepare a legal case and address issues with lien holders. While legal services were pro bono, stabilization repairs reached \$75,000; a payment of \$10,000 satisfied the \$400,000 mortgage.<sup>69</sup>

These costs were incurred despite the support of the Shaker Heights municipal government who reached out to CRS for help in saving the building. In a neighborhood of houses selling for as much as a million dollars, the Society believes it can recoup costs on the partially rehabilitated home. In October 2015, it was still dealing with remediation of mold.<sup>70</sup> As of November, the CRS website offered the property for sale and listed a series of upcoming open houses.<sup>71</sup>

Another innovative approach to dealing with Ohio abandoned properties is found in Youngstown's "Foreclosure-Bond Law" which requires banks foreclosing on properties to post a \$10,000 bond. When the local ordinance passed in 2013, it was one of three in the country. If the

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<sup>68</sup> "CRS's Use of Receivership as a Neighborhood Rehabilitation Tool," ND. Document shared with author by Michael Fleenor.

<sup>69</sup> Michael Fleenor, in discussion with author, October 13, 2015. Fleenor is Director of Preservation Services for the Cleveland Restoration Society and Scott Holbrook, "Courtland Boulevard Success Story," *Façade 95*, Summer 2015.

<sup>70</sup> Ibid.

<sup>71</sup> "The Courtland House," accessed November 14, 2015 at [http://clevelandrestoration.org/courtland/courtland\\_house.php](http://clevelandrestoration.org/courtland/courtland_house.php)

bank/owner maintains the property in good repair, it receives all but \$200 back when the house is sold. If the city is required to maintain the property or perform repairs, money is taken from the account to pay those costs. The ordinance has been upheld in court challenges.<sup>72</sup>

New Jersey incorporated expedited tax lien sales in its 2003 “Abandoned Properties Rehabilitation Act,” allowing its cities to gain control of properties earlier in the abandonment process. These expedited sales allowed municipalities to resell properties and require specific rehabilitation plans.<sup>73</sup>

The other options found were use of condemnation, also known as eminent domain. “Spot blight”<sup>74</sup> eminent domain is a practice used in Youngstown.<sup>75</sup> The city estimates there about 4,000 derelict buildings that should be demolished. Targeting individual properties, the city typically pays compensation to owners and the cost of demolition that follows.<sup>76</sup>

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<sup>72</sup> “Youngstown’s Bond Law Can Be a Powerful Weapon against Blight,” accessed November 14, 2015 at <http://www.vindy.com/news/2013/jul/26/youngstowns-bond-law-can-be-a-powerful-w/> and “Canton OH Collects \$1M from Bond Law on Default Properties,” accessed November 11, 2015 at [http://safeguardproperties.com/News/Community\\_Initiatives/2014/01/Canton\\_OH\\_Collects\\_\\$1M\\_from\\_Bond\\_Law\\_on\\_Default\\_Properties.aspx](http://safeguardproperties.com/News/Community_Initiatives/2014/01/Canton_OH_Collects_$1M_from_Bond_Law_on_Default_Properties.aspx). Springfield, Massachusetts was the third city cited who had this ordinance.

<sup>73</sup> “The Abandoned Properties Rehabilitation Act. New Tool for the Fight against Blight.”

<sup>74</sup> “Spot Blight Eminent Domain,” Accessed December 12, 2015 at [http://www.hcdnnj.org/index.php?option=com\\_content&view=article&catid=19:site-content&id=623:spot-blight-eminant-domain](http://www.hcdnnj.org/index.php?option=com_content&view=article&catid=19:site-content&id=623:spot-blight-eminant-domain) Spot blight refers to a city’s practice of using eminent domain to take individual properties.

<sup>75</sup> Amanda Smith, “Youngstown Using Spot Blight Program to Target Neglected Properties.” WYTV. October 22, 2015. Accessed November 14, 2015 at <http://wytv.com/2015/10/22/youngstown-using-spot-blight-program-to-target-neglected-properties/>. See also “Codified Ordinance of the City of Youngstown, Ohio,” §1104 Elimination of Spot Blight. Accessed December 1, 2015 at <http://whdrane.conwaygreene.com/NXT/gateway.dll?f=templates&fn=default.htm&vid=whdrane:OHYoungstown>

<sup>76</sup>Ibid.

## ***Part 4 Dangers and Opportunities***

### **Could 657A.10A Endanger Historic Properties?**

As a piece of enabling code allowing cities to move to demolish abandoned buildings, including vulnerable historic properties, could 657A.10A pose a threat to a city's historic fabric? In Waterloo, the law has been used about 100 times to address abandoned properties. While the city has not tracked which buildings might have been deemed historic, about 90% of the buildings were in the city's old urban core. It is likely that historic fabric was lost.<sup>77</sup>

But historic properties have been lost even without the use of 657A.10A. Davenport has never used the law that its own city attorney drafted. In Davenport's National Register Hamburg Historic District, less than 290 buildings remain of the 350 surveyed in the 1980s. Recently, the city issued a demolition list of thirty-three abandoned properties, most long vacant and some with violations going back for decades. Twelve are National Register-listed buildings; one of the twelve is also in the city's lone local historic district. Because Davenport's HPC has the power to grant or deny demolition permits for National Register properties,<sup>78</sup> the commission must approve the permits for all listed buildings. Had demolition requests for these properties been issued in Burlington, Waterloo, or Dubuque instead of Davenport, the only property subject to review would have been the single building listed in the local district. Because 657A.10A gives cities the ability to move more swiftly in addressing the abandoned property issues, the option could more easily endanger historic buildings. However, if the use of 657A.10A is balanced by a stronger demolition review process, and if cities would take advantage of its relative speed to

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<sup>77</sup> Zellhoefer interview.

<sup>78</sup> Staffers in Burlington, Cedar Rapids, Des Moines, Waterloo, and Dubuque were interviewed. None of their ordinances include demolition review for properties only listed in the National Register and not locally landmarked or in local districts.

take properties as part of a comprehensive preservation program, early intervention might save historic buildings before they become too derelict to restore.

## **Demolition Review**

Demolition review is a concept that most often resides in within local ordinances. It may be part of a city's Historic Preservation Commission (HPC) ordinance or in an independent section of city code. Traditional demolition review has been most often exercised for local historic district properties or for landmarks within the powers of preservation commission, the case in Burlington, Dubuque, and Waterloo. Davenport further empowers its HPC with this National Register oversight.<sup>79</sup> Across the country and in Iowa as well, there is a growing sense in many cities that more demolition oversight is needed for historic properties not covered by other means. These reviews tend to be triggered by a building's age and tend to, at the very least, delay demolition for some period of time until the building can more closely be assessed for its historic significance.<sup>80</sup> While a few Iowa cities are beginning to address this issue, Burlington, Davenport, Dubuque, and Waterloo do not have a demolition review process that extends beyond historic districts and local landmarks.

In 2015, Des Moines passed a demolition review process that includes all residential buildings over eighty years old and all commercial buildings over fifty years old.<sup>81</sup> A push for this review began after a home constructed from two Lustron buildings but with no demolition

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<sup>79</sup> Fritz Miller interview and Davenport Historic Preservation ordinance.

<sup>80</sup> Miller, Julia H., "Protecting Potential Landmarks through Demolition Review," *The American Law Institute*, 2007.

<sup>81</sup> Jack Porter, in discussion with author, November 23, 2015. Porter was an Iowa SHPO Preservation Consultant, served as alderman for the Des Moines City Council, sat on the Iowa Advisory Board for the National Trust and continues to be active in preservation issues in the city.



protection was demolished. The city's mayor appointed a task force to flesh out the details. The 50/80 year review threshold was a compromise that now gives protection to 68,255 buildings. Staff is heavily involved on the front end and uses a decision matrix to decide how far to take review, a time period that can range from ten days when there is no finding of historical significance to 120 days when it is determined that a property is eligible for landmark status.<sup>82</sup>

In Cedar Rapids, buildings older than fifty years in any area of the city are subject to review. After devastating flooding in 2009 required demolition of over 1,000 buildings in historic districts and historic areas, a new demolition review process arose out of the Section 106 remediation process. The process allows the Cedar Rapids HPC to put a 60-day hold on demolition requests. The hold gives the commission time to explore options with the building's owner including assisting in finding a new owner, exploring moving the property, salvaging the property or to simply document the building prior to demolition. If no actions are taken, the hold expires at sixty days and the demolition permit must be granted. The city liaison for the HPC estimates that three properties have been saved through the review process.<sup>83</sup>

While Dubuque's HPC does not have an age-based review process or rule on demolition requests for National Register properties, it does review demolition requests in all local historic districts and conservation districts. Dubuque has aggressively pursued identifying new historic areas and now has five local historic districts with an estimated 700 buildings and ten local conservation districts with an estimated 2,000 buildings.<sup>84</sup> Within its comprehensive

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<sup>82</sup> Jason Van Essen, in discussion with author, November 17, 2015. Van Essen is a Senior City Planner with Des Moines and serves as a liaison with the city's HPC, Urban Design Review Board and Landmark Review Board.

<sup>83</sup> Jeff Hintz, in discussion with author, October 19, 2015. Hintz is a Cedar Rapids city planner.

<sup>84</sup> Dave Johnson, in discussion with author, November 3, 2015. Johnson is Assistant Planner and HPC liaison for Dubuque, Iowa.

plan, Dubuque has included a focus on sustainability. Believing that demolition runs counter to that initiative, it avoids the option when possible.<sup>85</sup>

### **Legal Challenges and Code Amendments**

With the legal concept of “no taking without compensation,” a bedrock tradition within United States law and for those who advocate against property regulation, it would seem likely that 657A.10A would face regular challenges on this basis. However, this has not been the outcome.<sup>86</sup> For a handful of Burlington and Waterloo cases, owners have appeared at 657A.10A hearings to ask the judge to give them another chance to address property issues. In both cities, with about 100 petitions each, cases rarely go past the hearing stage, with the cities are almost always awarded the property.<sup>87</sup>

From time to time, property owners have appealed to higher courts when their property has been awarded to a municipality through 657A.10A. The law has been upheld in each instance.<sup>88</sup> Rather than centering arguments on an illegal taking, cases have hinged on

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<sup>85</sup> Johnson Interview.

<sup>86</sup> Rick Franck, in discussion with author, October 26, 2015. Franck is a private practice attorney who also serves as city attorney for the cities of Denison and Charter Oak, Iowa, has served as counsel for four 657A.10A cases and had done 657A.10A for the Iowa League of Cities. Also see Power and Zellhoefer interviews. In at least two cases, one in Burlington and one in Waterloo, the judges involved have granted the owner another opportunity at remediation; in both instances, the Waterloo and Burlington attorneys say that the owner failed to follow up and remediate the buildings.

<sup>87</sup> Power and Zellhoefer interviews. In at least two cases, one in Burlington and one in Waterloo, the judges involved have granted the owner another opportunity at remediation; in both instances, the Waterloo and Burlington attorneys say that the owner failed to follow up and remediate the buildings.

<sup>88</sup> Two examples include “City of Council Bluffs, Iowa v Anita Harder,” November 12, 2009. Accessed November 16, 2015 at <http://law.justia.com/cases/iowa/court-of-appeals/2009/9-680.html>. The Court of Appeals affirmed the law declaring that the house met the legal definition of “abandoned.” While Harder’s attorney introduced the idea of taking without compensation during the Court of Appeals arguments, that court found it to be a “passing reference” that had not been introduced in the original district court case and that therefore could not be decided on appeal. Another example is found in the Iowa Supreme Court’s “City of Waterloo v Lee Bainbridge,” May 23, 2008. Accessed November 16, 2015 at <http://caselaw.findlaw.com/ia-supreme-court/1381229.html>. The plaintiff, who had purchased a tax lien on a property that the city of Waterloo sought later to obtain through 657A.10A, claimed that the law was “unconstitutional on its face.” The Supreme Court found in favor of Waterloo, stating that the lien

challenging elements within the code such as how the code defines an abandoned property.<sup>89</sup> In Waterloo, plaintiffs were planning an appeal on a case based on the constitutionality of the law; Attorney Dave Zellhoefer was looking forward to the test. The case was dropped when the Iowa legislature stepped in and amended the code to permit tax lien holders to receive their initial investment back.<sup>90</sup> The question of whether 657A.10A would withstand a takings challenge is, to date, unanswered.

### ***Part 5- A Davenport Test Case***

#### **The City's Abandoned Property Issue in 2015**

As previously stated, Davenport has never chosen to use 657A.10A, the state ordinance that found its beginnings in the work of its Abandoned Housing Task Force. Its champion, Mayor Charlie Brooke, was diagnosed with cancer. Opting out of running for mayor but elected to a seat on City Council, his ability to lead the effort diminished as his health declined.<sup>91</sup> Brooke died in 2007.

The task force's goals were not met. The HAPPEN program ended in 2011; \$988,000 was expended and 39 homes were rehabbed. Given the state of the houses involved, securing loans was sometimes difficult since the money was paid only after all work was completed. Rehabilitators had difficulty gaining title to some of the abandoned properties.<sup>92</sup> Despite this

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holder had failed to act on its rights of redemption and should have known that the enactment of 657A.10A made its rights inferior to that of the city but took no action. In neither case did the courts ultimately rule on the unconstitutionality of the law as a taking.

<sup>89</sup> Ibid.

<sup>90</sup> Zellhoefer interview.

<sup>91</sup> Vandercar Interview.

roadblock, Davenport did not opt to invoke the terms of 657A.10A, the code it had helped create, to assist them.

A later shorter-lived initiative was the city’s “100 Homes” program, eventually opened to homes in the city’s urban revitalization tax exempt area—most of the old urban core—which offered \$15,000 to offset down payment and rehabilitation costs for homeowners buying single family homes in those neighborhoods.<sup>93</sup> When the program ended, seventeen homes had been rehabbed. After HAPPEN and “100 Homes” ended in 2011, no new unrestricted income housing programs emerged.<sup>94</sup>

By the summer of 2015, city staff was again reviewing vacant or abandoned properties in the city. In Fall 2015, staff issued a list of thirty-three properties it deemed ready for immediate demolition. In October, the Davenport City Council approved \$575,000 in additional funds over and above the city’s operating budget for demolition of these buildings. All on the list are in urban core neighborhoods.<sup>95</sup>

Twelve of the buildings are National Register properties identified in the surveys conducted thirty-five years ago. All of the properties have long histories of violations, boarding, and assessments; according to city staff, some had citations dating back even further than

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<sup>92</sup> “Program Has \$430,000 Available For New Projects,” *Quad City Times*, August 13, 2006. The author and her husband rehabbed a house under the HAPPEN program, attended meetings with the Abandoned House Task Force and staff who review project progress, and worked as volunteers to assist others filing for the program. She remembers there being delays in projects because titles could not be cleared. At that time, she was unaware of 657A.10A.

<sup>93</sup> Tory Brecht, “Davenport Expands its 100 Homes Program,” *Quad City Times*, July 8, 2009. Accessed December 5, 2015 at [http://qctimes.com/news/local/davenport-expands-its-homes-program/article\\_4b004330-6c36-11de-a7a0-001cc4c002e0.html](http://qctimes.com/news/local/davenport-expands-its-homes-program/article_4b004330-6c36-11de-a7a0-001cc4c002e0.html)

<sup>94</sup> Bruce Berger, email with author, December 14, 2015.

<sup>95</sup> Attachment 6. Red dots are the locations of the National Register properties slated for demolition.

existing city records indicate. All appear to be compromised, some with extremely serious issues.<sup>96</sup>

Nonetheless, an undeniable fact is that most of these buildings, with earlier intervention that 657A.10A action could have afforded, might have had a better chance of being saved. Of the twelve, only three are noted as being vacant prior to 2004, the year 657A.10A became law.<sup>97</sup> Whether the city would have been able to find rehabbers for all the properties is an open question. What is fact is that, of the three properties vacant prior to 2004, Davenport residents in the Hamburg neighborhood worked actively to find new owners for two of them.<sup>98</sup>

The real scope of the problem in 2015 is evident in a list developed by Davenport Public Works, a department whose duties include permitting, rental and property oversight and demolitions. This list, called “Suspected Vacant” includes a total of 266 properties and includes the 33 slated for demolition.<sup>99</sup> “Suspected Vacant” does not mean that serious issues have arisen with all of the properties, and it does not mean that any are abandoned. The list is generated from complaint calls from the public, or when the city has been notified or become aware of a vacancy.<sup>100</sup> Of those properties, approximately 201 are in the city’s historic urban core south of

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<sup>96</sup> Mike McGee, Building Inspection Manager, Davenport Public Works Department, statements during HPC work session November 10, 2015 and “HPC Abandoned Property Review 10/11/2015,” a PowerPoint presentation shared with the HPC by McGee.

<sup>97</sup> Attachment 7. National Register properties and notations of city actions.

<sup>98</sup> Attachment 7. Members of GRG, a not-for-profit group whose goal is saving abandoned buildings in the neighborhood, identified and recruited new owners for two of the properties, drafted a tax credit application for one and bid on another at a tax sale.

<sup>99</sup> Davenport Public Works Department, “Suspected Vacant” spreadsheet. Received by author December 1, 2015.

<sup>100</sup> Nicole Gleason, Davenport Assistant Public Works Director, email with author, December 9, 2015 Gleason offered several reasons that the properties were included on this list, including, attempted rental inspection and house found vacant, receive of a grass cutting/snow removal complaint that revealed a vacant property, citizen complaint of abandoned vehicle or debris. Since Davenport does not track vacancies, the city does not know the

Locust Street. Fifty-five of the properties—including the thirty-three on the demolition list—contain some notation relating to issues. Only nine of the fifty-five are in other parts of the city.<sup>101</sup> What is most disturbing is that a review of the addresses on the list reveals thirty-one additional properties—all located south of Locust and not on the 2015 demolition list—are contributing buildings in a district or individually listed in the National Register.<sup>102</sup> Potentially at risk are buildings that have already been recognized as historic as well as others on surrounding streets. It is clear Davenport is still dealing with its long term challenge of how to address vacant or abandoned properties. Given the history of what has happened to empty buildings in the urban core neighborhoods, left unchecked, structures that are now merely benignly vacant can become abandoned and derelict eyesores. Again, 657A.10A could be a tool to address the issue before the buildings become derelict and difficult to rehabilitate. However, its use in Davenport remains untested.

### ***Conclusion***

In November 2015, members of the Gold-Hamburg Historic District Association voted to formally ask the city to table action for the properties in their neighborhood listed on the demolition list to allow time to seek alternative solutions. On December 8, residents pled their case at the Historic Preservation Commission meeting. Commission members were asked that night to vote on demolition permits for all twelve National Register properties included on the list.<sup>103</sup>

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current status of many of these properties. “The conclusion I would draw is that the majority of citizen complaints on property maintenance are occurring in this area,” stated Gleason.

<sup>101</sup> Based on addresses identified in the city “Suspected Vacant” spreadsheet.

<sup>102</sup> The “Suspected Vacant” spreadsheet was compared by the author to the “Davenport Iowa Site Inventory 9-14-12” which is maintained by the Iowa SHPO.

The Commission voted to table action on all the permits for ninety days. A new mayor and a city council composed of veteran and first time aldermen will take office in January. The commission chair expressed the hope that delaying granting of the demolition permits would allow time to meet and discussion alternative solutions to the loss of more of the city’s historic fabric.<sup>104</sup>

Since the city owns none of the National Register properties, perhaps now is the time to test the use of 657A.10A. In the future, a comprehensive plan focused on earlier intervention, with 657A.10A as perhaps the best and most cost effective option in the tool box, might prevent such future eleventh hour scrambling.

State enabling codes such as Chapter 657A.10A grants certain powers to all Iowa municipalities. But it is at the local level where that power must be wielded, through city ordinances and political will, to address issues within historic neighborhoods. Local ordinances may arise out of recommendations by citizen groups like Davenport’s Abandoned Housing Task Force and language drafted by staff—professionally trained planners, lawyers and economic developers—whose job it is to evolve solutions to changing issues facing their cities. But within the municipal pecking order, citizens and staff are often trumped by elected officials. Cities develop and adopt comprehensive plans as a means of guiding decision making. It is left to the political will of those officials to make decisions based on that plan.

For Rudy Jones in Waterloo, 657A.10A has been a “magic wand” in addressing the city’s issue with abandoned buildings. But a magic wand only works if it is taken off the shelf.

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<sup>103</sup> HPC agenda items, discussion, and public comments. Davenport Historic Preservation Commission Meeting. December 8, 2015. Minutes not yet posted on city website.

<sup>104</sup> John Frueh, comments made at the Davenport Historic Preservation Commission on December 8, 2015. Frueh is the HPC Chair.

Whether other Iowa municipalities—like Davenport—will follow Waterloo’s example remains to be seen, and if so, under what circumstances. Until then, the question of whether 657A.10A helps or hurts historic preservation goes unanswered.

Coupled with appropriate demolition review, an organized approach to managing vacant properties, and a comprehensive plan that embraces the need to sustain Davenport’s historic neighborhoods, the use of 657A.10A has strong potential for timely and positive preservation outcomes.



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Attachment 1

Iowa Population and Growth by Decade and US Growth by Decade 1900-2000

Source: Created by author

**Iowa Population and Growth by Decade and  
US Growth by Decade 1900-2000**

| <b>Year</b>       | <b>Iowa Population<sup>1</sup></b> | <b>Iowa Growth From Previous Decade<sup>1</sup></b> | <b>United States Growth From Previous Decade<sup>2</sup></b> |
|-------------------|------------------------------------|---|--|
| 1900              | 2,231,853                          | -   |  |
| 1910              | 2,224,771                          | -0.3%   | 21.0%  |
| 1920              | 2,404,021                          | 8.1%  | 21.0%  |
| 1930              | 2,470,939                          | 2.8%  | 16.2%  |
| 1940              | 2,538,268                          | 2.7%  | 15.4%  |
| 1950              | 2,621,073                          | 3.3%  | 14.5%  |
| 1960              | 2,757,537                          | 5.2%  | 18.5%  |
| 1970              | 2,824,376                          | 2.4%  | 13.4%  |
| 1980              | 2,913,808                          | 3.2%  | 11.4%  |
| 1990              | 2,776,755                          | -4.7%   | 9.8%   |
| 2000              | 2,926,324                          | 5.4%  | 13.2%  |
| <b>1900-2000</b>  |                                    | <b>31.1%</b>  | <b>382.4%</b>  |
| <b>Avg/Decade</b> |                                    | <b>2.8%</b>   | <b>15.4%</b>   |

Data from sources below. Calculations by author

Source: US Census Bureau. Data found at

<sup>1</sup><http://www.demographia.com/db-state1900.htm>

<sup>2</sup> <http://www.u-s-history.com/pages/h980.html>



Attachment 2

1892 Birdseye Map of Davenport looking north. Central business district at center. Village of East Davenport is along the river beyond the rail-road bridge. Residential areas are growing adjacent to the business areas. Locust Street to the north is on the horizon.

Source: Huebinger Brothers. *Album of Davenport Iowa*. 1892



Attachment 3 is a multipage document and is inserted after Attachment 7



### Comparison of Population Growth 1900-2010-Selected States

| State          | 1900      | 2010      | % Increase |
|----------------|-----------|-----------|------------|
| Iowa           | 2,231,853 | 3,046,350 | 36.5%      |
| Indiana        | 2,516,462 | 6,483,800 | 157.7%     |
| Wisconsin      | 2,069,042 | 5,686,986 | 174.9%     |
| Kentucky       | 2,147,174 | 4,339,362 | 102.1%     |
| Tennessee      | 2,020,616 | 6,346,110 | 214.1%     |
| North Carolina | 1,893,810 | 9,535,475 | 403.5%     |
| Georgia        | 2,216,331 | 9,687,653 | 337.1%     |

Data compiled from source below; calculation by author

Source: "U.S. Population by State," <http://www.infoplease.com/ipa/A0004986.html>

### Attachment 4

Comparison of growth in states and comparative age of housing stock.

Source: Created by author

### Comparative Populations and Age of Housing Stock

| City  | Population <sup>1</sup> | # Housing Units <sup>2</sup> | % 50+ Years <sup>3</sup> |
|---|-------------------------|------------------------------|--------------------------|
| <b>Davenport, IA</b>                        | <b>99,685</b>           | <b>44,252</b>                | <b>53.6</b>              |
| South Bend, IN                              | 100,800                 | 47,154                       | 63.2                     |
| Green Bay, WI                               | 104,057                 | 45,812                       | 43.0                     |
| Bowling Green, KY*                          | 58,067                  | 25,226                       | 34.7                     |
| Murfreesboro, TN                            | 108,755                 | 46,108                       | 16.1                     |
| High Point, NC                              | 104,371                 | 46,246                       | 33.4                     |
| Sandy Springs, GA                           | 93,853                  | 46,971                       | 20.4                     |
| Average % Over 50 Years Excluding Davenport |                         |                              | 35.1                     |

Source: Compiled by author from United States Census Bureau, American Factfinder at [http://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml#none](http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none)

<sup>1</sup>2010 Demographic Profile

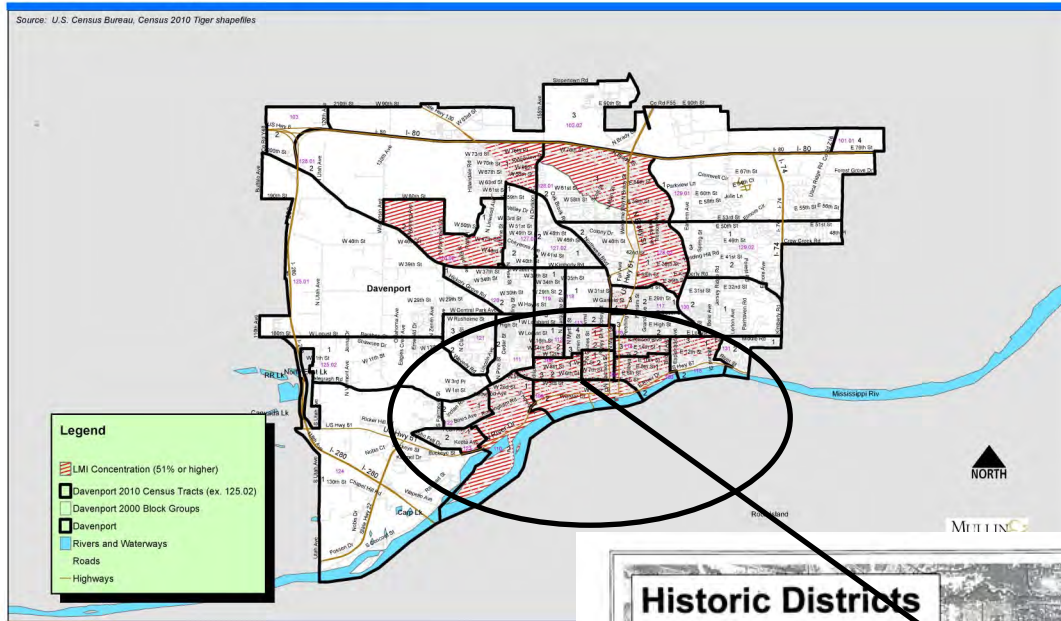
<sup>2</sup>2009-2013 American Community Survey 5-Year Estimates

<sup>3</sup>2013 Estimates

\* There are no cities in the 100,000 population range in Kentucky.

Both Louisville and Lexington are much more urban than other comparison cities.

**Map 2-10: Concentration of LMI Residents: City of Davenport, Iowa**  
 Analysis of Impediments to Fair Housing Choice, 2012



Map 1

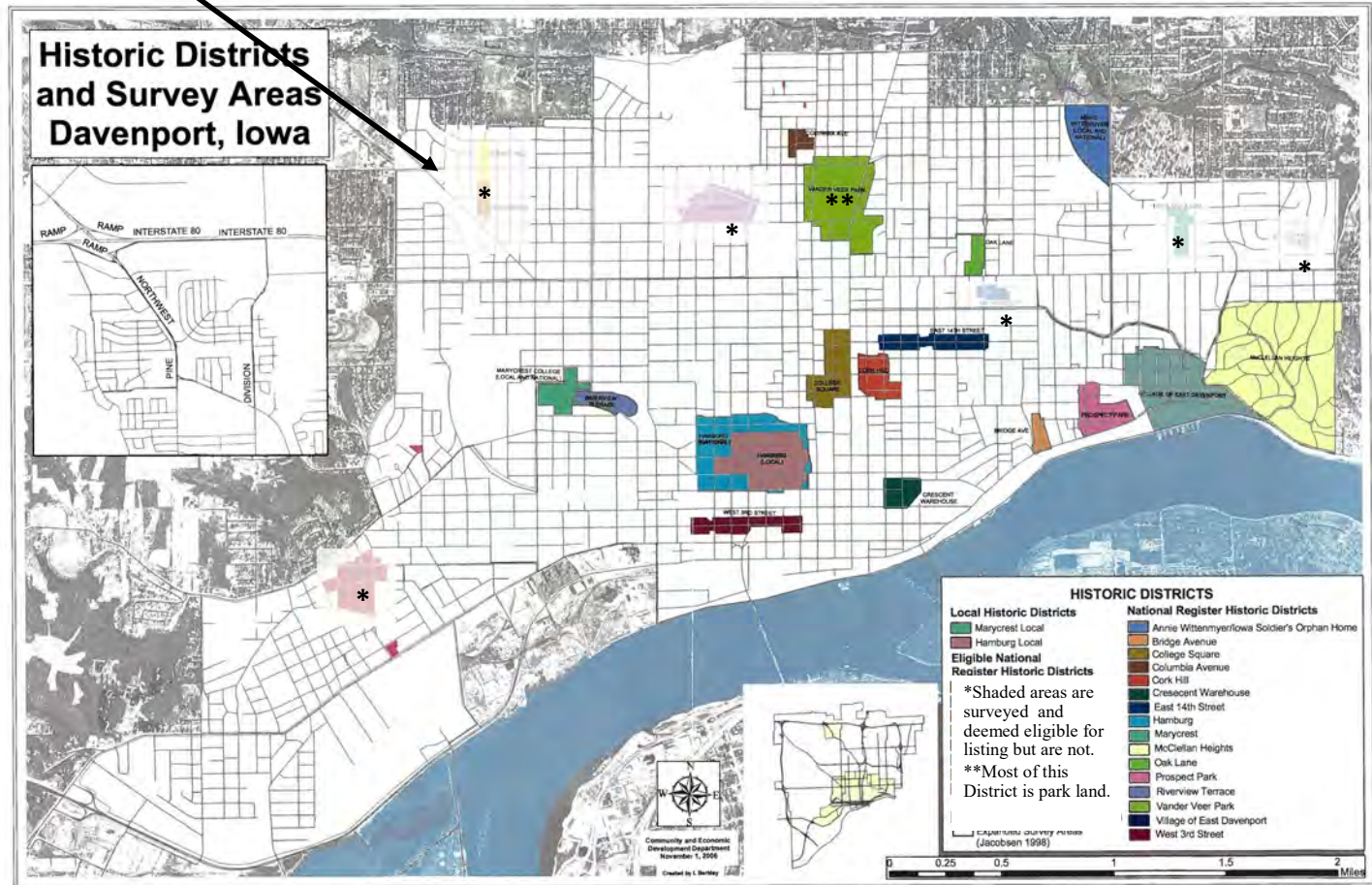
Attachment 5

Map 1: Census tracts with HUD defined low to moderate income. 51% of families are at or below 80% of area median income.

Source: Davenport Department of Community Planning & Economic Development

Map 2: Historic Districts and survey Areas in Davenport Iowa.

Source: Davenport Department of Community Planning

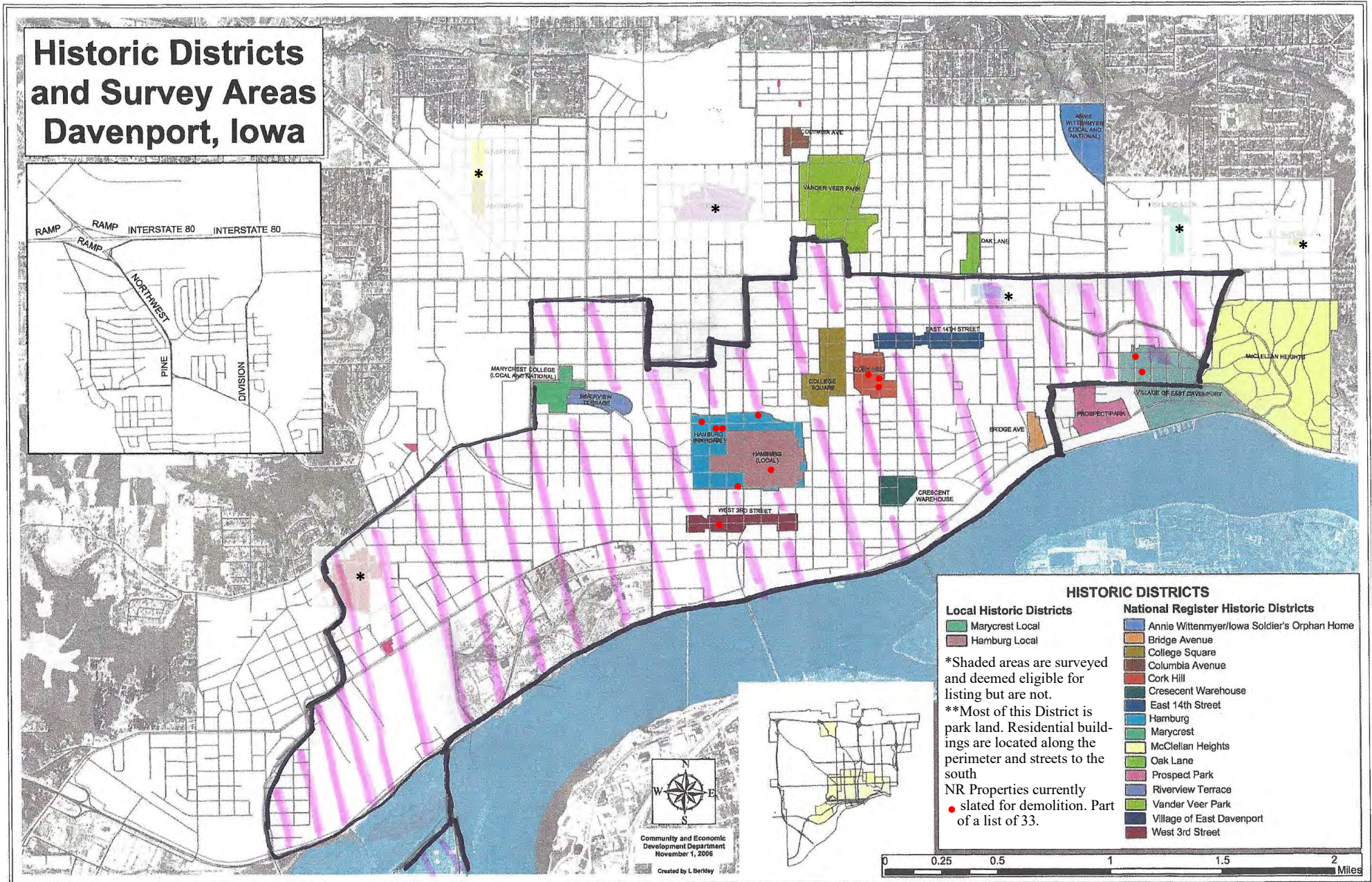


Map 2



Map showing approximate overlay of low/moderate income census tracts (Map 1) over map of historic districts. Red dots are location of nine National Register contributing structures slated for demolition.

Source: Davenport Department of Community Planning & Economic Development. Overlay by author.





Attachment 7

National Register properties slated for demolition. Note vacancy date and intent to demolish letter date. Action began on the highlighted properties prior to implementation of 657A.10A.

Source: Compiled by author from information provided by the Department of Public Works.

| <b>Address</b>     | <b>1st Notice Vacant</b> | <b>Intent to Demolish Letter or<br/>Final Repair/Tear Down Notice</b> | <b>Historic District</b>  |
|--------------------|--------------------------|---|---------------------------|
| 1224 Pershing Ave. | 9/2007                   | 7/2015  | Cork Hill                 |
| 1226 Pershing Ave. | 9/2010                   | 7/2015  | Cork Hill                 |
| 327 E. 11th St.    | 5/2014                   | 9/2015  | Cork Hill                 |
| 716 W 5th St.      | 10/2000                  | 9/2015  | Hamburg                   |
| 421 W 6th St.      | 3/1988                   | 7/2015  | Hamburg                   |
| 814 W 8th St.      | 2/2001                   | 10/2015   | Hamburg                   |
| 816 W 8th St.      | 8/2010                   | 8/2015  | Hamburg                   |
| 415 W 9th St.      | 7/2010                   | 7/2015  | Hamburg                   |
| 815 W 9th St.      | 6/2004*                  | 11/2010   | Hamburg                   |
| 1230 Spring St.    | 9/2007                   | 9/2015  | Village of East Davenport |
| 1911 E 13th St.    | 1/2008                   | 10/2015   | Village of East Davenport |
| 815 W. 3rd St.     | 11/2005                  | 3/2014  | West 3rd St.              |

\* Sits in front yard of another house and has been vacant for many years.

## CHAPTER 657A

## ABANDONED OR UNSAFE BUILDINGS — ABATEMENT BY REHABILITATION

Nuisances in general, chapter 657

|        |  |          |   |
|--------|--|----------|---|
| 657A.1 | Definitions.   | 657A.8   | Assessment of costs.                              |
| 657A.2 | Petition.  | 657A.9   | Discharge of receiver.                            |
| 657A.3 | Interested persons — opportunity to abate public nuisance. | 657A.10  | Compensation and liability of receiver.           |
| 657A.4 | Appointment of receiver.                                   | 657A.10A | Petition by city for title to abandoned property. |
| 657A.5 | Determination of costs of abatement.                       | 657A.11  | Jurisdiction — remedies.                          |
| 657A.6 | Powers and duties of receiver.                             | 657A.12  | Indexing of petition.                             |
| 657A.7 | Priority of receiver's mortgage.                           |          |   |

**657A.1 Definitions.**

As used in [this chapter](#), unless context requires otherwise:

1. “*Abandoned*” or “*abandonment*” means that a building has remained vacant and has been in violation of the housing code of the city in which the property is located or the housing code applicable in the county in which the property is located if outside the limits of a city for a period of six consecutive months.

2. “*Abate*” or “*abatement*” in connection with property means the removal or correction of hazardous conditions deemed to constitute a public nuisance or the making of improvements needed to effect a rehabilitation of the property consistent with maintaining safe and habitable conditions over the remaining useful life of the property. However, the closing or boarding up of a building or structure that is found to be a public nuisance is not an abatement of the nuisance.

3. “*Building*” means a building or structure located in a city or outside the limits of a city in a county, which is used or intended to be used for residential purposes, and includes a building or structure in which some floors may be used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and other floors are used, designed, or intended to be used for residential purposes.

4. “*Interested person*” means an owner, mortgagee, lienholder, or other person that possesses an interest of record or an interest otherwise provable in property that becomes subject to the jurisdiction of the court pursuant to [this chapter](#), the city in which the property is located, the county in which the property is located if the property is located outside the limits of a city, and an applicant for the appointment as receiver pursuant to [this chapter](#).

5. “*Neighboring landowner*” means an owner of property which is located within five hundred feet of property that becomes subject to the jurisdiction of the court pursuant to [this chapter](#).

6. “*Owner*” includes a person who is purchasing property by land installment contract or under a duly executed purchase contract.

7. “*Public nuisance*” means a building that is a menace to the public health, welfare, or safety, or that is structurally unsafe, unsanitary, or not provided with adequate safe egress, or that constitutes a fire hazard, or is otherwise dangerous to human life, or that in relation to the existing use constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

[85 Acts, ch 222, §1](#); [86 Acts, ch 1059, §1](#); [96 Acts, ch 1204, §27](#)

**657A.2 Petition.**

1. A petition for abatement under [this chapter](#) may be filed in the district court of the county in which the property is located, by the city in which the property is located, by the county if the property is located outside the limits of a city, by a neighboring landowner, or by a duly organized nonprofit corporation which has as one of its goals the improvement of housing conditions in the county or city in which the property in question is located. A petition for abatement filed under [this chapter](#) shall include the legal description of the real

property upon which the nuisance or dangerous or unsafe condition is located unless the nuisance or dangerous or unsafe condition is not situated on or confined to a parcel of real property or is portable or capable of being removed from the real property. Service on the owner shall be by personal service or by certified mail, or if service cannot be made by either method, by posting the notice in a conspicuous place on the building and by publication.

2. If a petition filed pursuant to [this chapter](#) alleges that a building is abandoned or is in a dangerous or unsafe condition, the city, county, if the property is located outside the limits of a city, neighboring landowner, or nonprofit corporation may apply for an injunction requiring the owner of the building to correct the condition or to eliminate the condition or violation. The court shall conduct a hearing at least twenty days after written notice of the application for an injunction and of the date and time of the hearing is served upon the owner of the building. Notice of the hearing shall be served in the manner provided in [subsection 1](#).

3. If the court finds at the hearing that the building is abandoned or is in a dangerous or unsafe condition, the court shall issue an injunction requiring the owner to correct the condition or to eliminate the violation, or another order that the court considers necessary or appropriate to correct the condition or to eliminate the violation.

4. In a proceeding under [this chapter](#), if the court makes the finding described in [subsection 3](#) and additionally finds that the building in question is a public nuisance and that the owner of the building has been afforded reasonable opportunity to correct the dangerous or unsafe condition found or to eliminate the violation found but has refused or failed to do so, the judge shall cause notice of the findings to be served upon the owner, each mortgagee or other lienholder of record, and other known interested persons, and shall order the persons served to show cause why a receiver should not be appointed to perform work and to furnish material that reasonably may be required to abate the public nuisance. The notice shall be served in the manner provided in [subsection 1](#).

5. In a proceeding under [this chapter](#), if the court determines the building is not abandoned or is not in a dangerous or unsafe condition, the court shall dismiss the petition and may require the petitioner to pay the owner's reasonable attorney fees actually incurred.

85 Acts, ch 222, §2; 87 Acts, ch 113, §1, 2; 96 Acts, ch 1204, §28; 2004 Acts, ch 1165, §9, 11; 2010 Acts, ch 1050, §10

Referred to in [§657A.10A](#)

### **657A.3 Interested persons — opportunity to abate public nuisance.**

1. Before appointing a receiver to perform work or to furnish material to abate a public nuisance under [this chapter](#), the court shall conduct a hearing at which the court shall offer mortgagees of record, lienholders of record, or other known interested persons in the order of priority of interest in title, the opportunity to undertake the work and to furnish the materials necessary to abate the public nuisance. The court shall require the person selected to demonstrate the ability to undertake promptly the work required and to post security for the performance of the work. All amounts expended by the person toward abating the public nuisance are a lien on the property if the expenditures were approved in advance by the judge and if the person desires the lien. The lien shall bear interest at the rate provided for judgments pursuant to [section 535.3](#), and shall be payable upon terms approved by the judge. If a certified copy of the court order that approved the expenses and the terms of payment for the lien, and a description of the property in question are filed for record within thirty days of the date of issuance of the order in the office of the county recorder of the county in which the property is located, the lien has the same priority as the mortgage of a receiver as provided in [section 657A.7](#).

2. If the court determines at the hearing conducted pursuant to [subsection 1](#), that no interested person can undertake the work and furnish the materials required to abate the public nuisance, or if the court determines at any time after the hearing that an interested person who is undertaking corrective work pursuant to [this section](#) cannot or will not proceed, or has not proceeded with due diligence, the court may appoint a receiver to take possession

and control of the property. The receiver shall be appointed in the manner provided in [section 657A.4](#).

[85 Acts, ch 222, §3](#)

Referred to in [§657A.4](#), [§657A.10A](#)

#### **657A.4 Appointment of receiver.**

After conducting a hearing pursuant to [section 657A.3](#), the court may appoint a receiver to take possession and control of the property in question. A person shall not be appointed as a receiver unless the person has first provided the court with a viable financial and construction plan for the rehabilitation of the property in question and has demonstrated the capacity and expertise to perform the required work in a satisfactory manner. The appointed receiver may be a financial institution that possesses an interest of record in the property, a nonprofit corporation that is duly organized and exists for the primary purpose of improving housing conditions in the county or city in which the property in question is located, or any person deemed qualified by the court. No part of the net earnings of a nonprofit corporation serving as a receiver under [this section](#) shall benefit a private shareholder or individual. Membership on the board of trustees of a nonprofit corporation does not constitute the holding of a public office or employment and is not an interest, either direct or indirect, in a contract or expenditure of money by a city or county. No member of a board of trustees of a nonprofit corporation appointed as receiver is disqualified from holding public office or employment, nor is a member required to forfeit public office or employment by reason of the membership on the board of trustees.

[85 Acts, ch 222, §4](#); [96 Acts, ch 1204, §29](#)

Referred to in [§657A.3](#), [§657A.10A](#)

#### **657A.5 Determination of costs of abatement.**

1. Prior to ordering work or the furnishing of materials to abate a public nuisance under [this chapter](#), the court shall make all of the following findings:

- a. The estimated cost of the labor, materials, and financing required to abate the public nuisance.
- b. The estimated income and expenses of the property after the furnishing of the materials and the completion of the repairs and improvements.
- c. The need for and terms of financing for the performance of the work and the furnishing of the materials.
- d. If repair and rehabilitation of the property are not found to be feasible, the cost of demolition of the property or the portions of the property that constitute the public nuisance.

2. Upon the written request of all the known interested persons to have the property or portions of the property demolished, the court may order the demolition. However, demolition shall not be ordered unless the requesting persons have paid the costs of demolition, the costs of the receivership, and all notes and mortgages of the receivership.

[85 Acts, ch 222, §5](#)

Referred to in [§657A.10A](#)

#### **657A.6 Powers and duties of receiver.**

Before proceeding with the receiver's duties, a receiver appointed by the court shall post a bond in an amount designated by the court. The court may empower the receiver to do the following:

1. Take possession and control of the property, operate and manage the property, establish and collect rents and income, lease and rent the property, and evict tenants. An existing housing or building ordinance violation does not restrict the receiver's authority pursuant to [this subsection](#).

2. Pay all expenses of operating and conserving the property, including but not limited to the cost of electricity, gas, water, sewerage, heating fuel, repairs and supplies, custodian services, taxes, assessments, and insurance premiums, and hire and pay reasonable compensation to a managing agent.

3. Pay prereceivership mortgages and other liens and installments of prereceivership mortgages and other liens.

4. Perform or enter into contracts for the performance of work and the furnishing of materials necessary to abate the public nuisance, and obtain financing for the abatement of the public nuisance.

5. Pursuant to court order, remove and dispose of personal property which is abandoned, stored, or otherwise located on the property, that creates a dangerous or unsafe condition or that constitutes a violation of housing or building regulations or ordinances.

6. Obtain mortgage insurance for a receiver's mortgage from an agency of the federal government.

7. Enter into agreements and take actions necessary to maintain and preserve the property and to comply with housing and building regulations and ordinances.

8. Give the custody of the property and the opportunity to abate the nuisance and operate the property to the owner or to a mortgagee or a lienholder of record.

9. Issue notes and secure the notes by mortgages bearing interest at the rate provided for judgments pursuant to [section 535.3](#), and terms and conditions as approved by the court. When transferred by the receiver in return for valuable consideration in money, material, labor, or services, the notes issued by the receiver are freely transferable.

[85 Acts, ch 222, §6](#)

Referred to in [§657A.8](#), [§657A.10A](#)

#### **657A.7 Priority of receiver's mortgage.**

1. If the receiver's mortgage is filed for record in the office of the county recorder of the county in which the property is located within sixty days of the issuance of a secured note, the receiver's mortgage is a first lien upon the property and is superior to claims of the receiver and to all prior or subsequent liens and encumbrances except taxes and assessments. Priority among the receiver's mortgages is determined by the order in which the mortgages are recorded.

2. The creation of a mortgage lien under [this chapter](#) prior to or superior to a mortgage of record at the time the receiver's mortgage lien was created does not disqualify a prior recorded mortgage as a legal investment.

[85 Acts, ch 222, §7](#)

Referred to in [§657A.3](#), [§657A.10A](#)

#### **657A.8 Assessment of costs.**

The court may assess the costs and expenses set out in [section 657A.6, subsection 2](#), and may approve receiver's fees to the extent that the fees are not covered by the income from the property.

[85 Acts, ch 222, §8](#)

Referred to in [§657A.10A](#)

#### **657A.9 Discharge of receiver.**

The receiver may be discharged at any time in the discretion of the court. The receiver shall be discharged when all of the following have occurred:

1. The public nuisance has been abated.

2. The costs of the receivership have been paid.

3. Either all the receiver's notes and mortgages issued pursuant to [this chapter](#) have been paid, or all the holders of the notes and mortgages request in writing that the receiver be discharged.

[85 Acts, ch 222, §9](#)

Referred to in [§657A.10A](#)

#### **657A.10 Compensation and liability of receiver.**

1. A receiver appointed under [this chapter](#) is entitled to receive fees and commissions in the same manner and to the same extent as receivers appointed in actions to foreclose mortgages.

2. The receiver appointed under [this chapter](#) is not civilly or criminally liable for actions pursuant to [this chapter](#) taken in good faith.

[85 Acts, ch 222, §10](#); [86 Acts, ch 1238, §27](#)

Referred to in [§657A.10A](#)



#### **657A.10A Petition by city for title to abandoned property.**

1. *a.* In lieu of the procedures in [sections 657A.2 through 657A.10](#), a city in which an abandoned building is located may petition the court to enter judgment awarding title to the abandoned property to the city. A petition filed under this section shall include the legal description of the abandoned property. If more than one abandoned building is located on a parcel of real estate, the city may combine the actions into one petition. The owner of the building and grounds, mortgagees of record, lienholders of record, or other known persons who hold an interest in the property shall be named as respondents on the petition.

*b.* The petition shall be filed in the district court of the county in which the property is located. Service on the owner and any other named respondents shall be by certified mail and by posting the notice in a conspicuous place on the building. The action shall be in equity.

2. Not sooner than sixty days after the filing of the petition, the city may request a hearing on the petition.

3. In determining whether a property has been abandoned, the court shall consider the following for each building that is located on the property and named in the petition and the building grounds:

*a.* Whether any property taxes or special assessments on the property were delinquent at the time the petition was filed.

*b.* Whether any utilities are currently being provided to the property.

*c.* Whether the building is unoccupied by the owner or lessees or licensees of the owner.

*d.* Whether the building meets the city's housing code for being fit for human habitation, occupancy, or use.

*e.* Whether the building is exposed to the elements such that deterioration of the building is occurring.

*f.* Whether the building is boarded up.

*g.* Past efforts to rehabilitate the building and grounds.

*h.* The presence of vermin, accumulation of debris, and uncut vegetation.

*i.* The effort expended by the petitioning city to maintain the building and grounds.

*j.* Past and current compliance with orders of the local housing official.

*k.* Any other evidence the court deems relevant.

4. In lieu of the considerations in [subsection 3](#), if the city can establish to the court's satisfaction that all parties with an interest in the property have received proper notice and either consented to the entry of an order awarding title to the property to the city or did not make a good faith effort to comply with the order of the local housing official within sixty days after the filing of the petition, the court shall enter judgment against the respondents granting the city title to the property.

5. If the court determines that the property has been abandoned or that [subsection 4](#) applies, the court shall enter judgment awarding title to the city. The title awarded to the city shall be free and clear of any claims, liens, or encumbrances held by the respondents.

6. If a city files a petition under [subsection 1](#), naming the holder of a tax sale certificate of purchase for the property as a respondent, the city shall also file the petition, along with a verified statement declaring that the property identified in the petition contains an abandoned building, with the county treasurer. Upon receiving the petition and verified statement, the county treasurer shall make an entry in the county system canceling the sale of the property and shall refund the purchase money to the tax sale certificate holder.

[2004 Acts, ch 1165, §10, 11; 2010 Acts, ch 1050, §11, 12; 2013 Acts, ch 30, §261](#)

#### **657A.11 Jurisdiction — remedies.**

1. An action pursuant to [this chapter](#) is exclusively within the jurisdiction of district judges as provided in [section 602.6202](#).

2. [This chapter](#) does not prevent a person from using other remedies or procedures to enforce building or housing ordinances or to correct or remove public nuisances.

[85 Acts, ch 222, §11](#)

#### **657A.12 Indexing of petition.**

1. When a petition affecting real property is filed by a governmental entity under [this](#)

[chapter](#), the clerk of the district court shall index the petition pursuant to [section 617.10](#), if the legal description of the affected property is included in or attached to the petition.

2. After filing the petition with the clerk of the district court, the governmental entity shall also file the petition in the office of the county treasurer. The county treasurer shall include a notation of the pendency of the action in the county system, as defined in [section 445.1](#), until the judgment of the court is satisfied or until the action is dismissed. Pursuant to [section 446.7](#), an affected property that is subject to a pending action shall not be offered for sale by the county treasurer at tax sale.

[2010 Acts, ch 1050, §13](#)