

ORDINANCE NO. 13,718

AN ORDINANCE to amend the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 13,518, passed August 18, 1997, and amended by Ordinance No. 13,587, passed March 28, 1998, and amended by Ordinance No. 13,648, passed October 5, 1998, by repealing Sections 17-1.01, 17-1.04, 17-2, 17-2.02, 17-4.03, 17-4.04 and 17-5 thereof and enacting new Sections 17-1.01, 17-1.04, 17-2, 17-2.02, 17-4.03, 17-4.04 and 17-5, relating to removal of abandoned property from the public right-of-way.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 13,518, passed August 18, 1997, and amended by Ordinance No. 13,587, passed March 28, 1998, and amended by Ordinance No. 13,648, passed October 5, 1998, is hereby amended by repealing Sections 17-1.01, 17-1.04, 17-2, 17-2.02, 17-4.03, 17-4.04 and 17-5 thereof and enacting new Sections 17-1.01, 17-1.04, 17-2, 17-2.02, 17-4.03, 17-4.04 and 17-5, relating to removal of abandoned property from the public right-of-way, as follows:

**17-1.01. NUISANCES ENUMERATED - SUBJECT TO ENFORCEMENT BY ADMINISTRATIVE HEARING PROCEDURE OR CIVIL ACTION.**

The following are nuisances which may be enforced through the administrative hearing process as set forth in this subchapter:

(a) Depositing any poisonous material or thing on any real estate, so as to allow access to it by any animal or person;

(b) Depositing or storing of flammable junk on any real estate, including but not limited to old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles, unless it be in a building of fireproof construction;

(c) Depositing or storing outside a completely enclosed building, items that

constitute a threat to the public health, safety or welfare, including but not limited to the following: old or scrap rope, rags, batteries, paper, trash, rubber debris, tires, waste, used lumber or salvaged wood, inoperable machinery or appliances or parts of such machinery or appliances, vehicular component parts, iron, steel, old or scrap household goods or hardware, cut brush or wood, including dead or decaying plant material except as contained in a compost pile or orderly stacked firewood if cut in lengths of four feet or less;

(d) Discarding or abandoning of refrigerators, iceboxes or similar containers equipped with an airtight door, lid with a snap, lock or other device which can not be released from the inside, whether the same is abandoned or discarded outside any building or dwelling, or within any unoccupied or abandoned building, dwelling or other structure;

(e) Depositing or storing of litter, garbage or organic waste on any real estate, provided, however, that this subchapter shall not prohibit the storage of litter, garbage or organic waste in authorized private receptacles for collection;

(f) Trees infected with Dutch elm disease or oak wilt, or any dead or dying tree, shrub, brush, or wood, or any tree, shrub, brush, wood or debris infected with any disease, so as to constitute a threat to the public health, safety or welfare;

(g) Any tree or shrub whose foliage extends over the city right-of-way in violation of section 27-14 or section 25-12 of this code;

(h) Graffiti as is defined in chapter 17, subsection 5, when placed on any surface not primarily intended for such use except as specifically permitted therein;

(i) Any motor vehicle which is unlicensed, unsafe or inoperable found upon public or private real estate, and the contents therein, which is not stored within an enclosed building. This subchapter shall not apply to legitimate businesses operating in a lawful place and manner provided, however, that such outside areas are screened from public view and do not constitute a threat to the public health, safety or welfare.

(j) Obstructing or encroaching by motor vehicles or otherwise upon any public or private, road, street, highway, or right-of-way which causes traffic to cross the marked centerline or leave the usual traveled portion of roadway to travel around the obstruction or encroachment. This subchapter shall not apply to emergency vehicles and official government or utility vehicles in the performance of their duties, nor to other vehicles while legally maneuvering into position, or momentarily engaged in receiving or discharging passengers, loading or unloading of merchandise or in obedience to traffic regulations, signs or signals or an involuntary stopping of the vehicle by reason of causes beyond the control of the operator.

(k) Businesses, the operation or maintenance of which adversely impacts nearby residential or commercial uses and which:

(1) Jeopardizes or endangers the public health or safety, or the health or safety of persons residing or working on the premises or in the surrounding area; or,

(2) Has resulted in or facilitated any of the following activities: disturbances of the

peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, illegal parking, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, traffic violations, or police detention, citations or arrests; or,

(3)Violates any other provision of this subchapter or any other City, state or federal regulations, ordinance or statute.

(1)No person shall abandon, or allow the abandonment, of property in any public right-of-way abutting real estate owned or under control of the adjacent real estate. Property left in the public right of way of any road or alley, including but not limited to any personal and household items, furniture, appliances, machinery, equipment, building materials or other items shall be deemed abandoned.

**17-1.04.REPEALED BY ORD. 13,---**

**17-2. DEFINITIONS.**

(a)Hearing officer means the city manager or designated representative.

(b) Department means any city department charged with enforcement of any provision enumerated herein.

(c) An emergency is any unforeseen combination of circumstances requiring prompt action to prevent the otherwise probable loss of life or serious injury or significant damage to real estate.

(d) Motor vehicle means every device in, upon, or by which a person or property is or may be transported or drawn upon a highway or street, with the exception of devices moved by human power or used exclusively upon stationary rails or tracks, and shall include without limitation an automobile, truck, trailer, motorcycle, tractor, buggy, wagon, farm machinery, or any combination thereof.

(e) Enclosed building means any structure or portion thereof containing a roof and having exterior walls constructed in such a manner as to obscure from view the contents of the building from any street or adjacent real estate.

(f) Unlicensed motor vehicle means any vehicle which is not displaying a current license as required by the law of the state of Iowa. For the purposes of this subchapter a valid current license shall not include a stored vehicle license issued under the laws of the state of Iowa. Mere licensing of an inoperable or unsafe motor vehicle shall not constitute a defense to the finding that the presence of any vehicle constitutes a nuisance.

(g) Unsafe motor vehicle means:

(1) Any motor vehicle with a broken or shattered windshield or any exposed broken glass edges.

(2) Any motor vehicle with a missing fender, door, hood, steering wheel, trunk top, or trunk handle.

(3) Any motor vehicle which has become the habitat of rats, mice, snakes, or any other vermin or insects.

(4) Any motor vehicle left unattended on jacks, blocks, or elevated in any other way which constitutes a threat to the public health, safety or welfare.

(5) Any motor vehicle which because of its condition constitutes a threat to the public health, safety or welfare.

(h) Inoperable motor vehicle means any motor vehicle lacking an engine, a wheel, or other part(s) which render the motor vehicle incapable of being driven, or in the case of a trailer, incapable of being towed.

(i) Public right of way includes the area of land, the right to possession of which is secured by the city for roadway purposes and includes the traveled portion of the public streets and alleys as well as the border area, which is all property outside the lot and property lines and inside the curb lines or traveled portion of the public streets or alleys.

#### **17-2.02. REBUTTABLE PRESUMPTION.**

In any proceeding charging a violation of this subchapter, proof that the particular violation described constitutes a violation of this subchapter, together with proof that the particular defendant named was the owner, agent, tenant, or lessee of the residential dwelling, commercial establishment and/or real estate upon which the violation occurred, shall be deemed by rebuttable presumption that said person was the person violating this subchapter. That, as to property abandoned, in the public

right of way, it is presumed that the abandoned property was placed there by or with the consent of the owner or person responsible for the abutting property.

**17-4.03. ABANDONED PROPERTY -RIGHT OF WAY.**

Property left in the public right of way of any road or alley, including but not limited to any personal and household items, furniture, appliances, machinery, equipment, building materials or other items shall be deemed abandoned and shall constitute a violation of this subchapter and are hereby declared a public nuisance. Property left on the public right of way as a result of an eviction or a forcible entry and detainer action shall be deemed abandoned and are hereby declared a public nuisance. The abutting property owner is required to maintain all property outside the lot lines and property lines and inside the curb lines or the travelled portion of the public streets or alleys. Any items which remain on the public right of way or any road or alley for a period of forty-eight (48) hours shall be deemed abandoned and to constitute a public nuisance subject to removal from the real estate by the city without notice. It shall not be a defense to this subchapter that the public works department of the city has been contacted for a bulk waste pick up, if the items were placed on the curb or right of way prior to the pick up date assigned by the public works department. The costs of the abatement will be assessed against the abutting real estate from which the nuisance was abated for collection in the same manner as a property tax.

**17-4.04. EMERGENCY ACTIONS AND ABANDONED PROPERTY - NOTICE OF RIGHT TO HEARING.**

(a) In the event the city abated a nuisance due to an emergency condition, or by removal of abandoned property, a notice shall be given of the right to a hearing regarding costs. The notice shall contain the following information:

(1) A description, to the extent possible, of the conditions which constituted the nuisance or the abandoned property;

(2) A description of the location of the nuisance or abandoned property;

(3) That the city entered onto the said real estate, or public right of way, and caused the conditions which constituted the nuisance to be abated, or removed the abandoned property, and that the costs of the abatement or removal will be assessed against the real estate from which the nuisance was abated, or against the real estate abutting the public right of way where the property was abandoned, for collection in the same manner as a property tax, or be collected as a personal judgment;

(4) An itemization of the costs incurred by the city in the abatement of the violation or removal of the property; and

(5) That the person notified, or the person's duly authorized agent, may file a written request for hearing as set forth in this subchapter.

(6) That failure to make written request for a hearing within ten (10) days of receipt of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the nuisance existed and costs will be assessed against the abutting real estate without further notice.

(b) Service of Notice.

Service on the notice provided for in subsection (a) hereof shall be by regular mail, addressed to the owner to the real estate and/or the person deemed responsible for the real estate abutting the public right of way and to any "public right of way" upon which the abandoned items are located.



## 17-5. HEARING.

(1) Any person ordered to abate a nuisance may have, upon request, an appeal hearing with a hearing officer to determine whether a nuisance exists or existed.

(2) Any person notified of the costs to be assessed against real estate as a result of an emergency removal or the removal of abandoned property may, upon written request, have an appeal hearing before a hearing officer to determine whether the costs should be assessed against the real estate.

(3) A request for a hearing shall be made in writing and filed with the city clerk within ten (10) days of receipt of the notice.

(4) Each request for hearing shall contain the address of the person requesting the hearing to which all further notices shall be mailed or served and shall state the basis for the appeal.

(5) The hearing shall be scheduled to be held as soon as practicable and no later than fourteen (14) days after the request for hearing was filed. The person requesting the hearing shall be notified in writing of the date and place of such hearing at least three (3) days in advance thereof. At such hearing the department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.

(6) The hearing officer may: find that violations exist or existed; void the notice; order compliance with all or part of the notice; extend time for compliance of the notice to a date certain but in no event shall time for compliance be extended more than ninety (90) days from the date of the notice; uphold the assessment for costs of abatement; or reduce or waive costs of the assessment.

(7) The hearing officer may find that violations exist or existed, may void the notice, order compliance with all or part of the notice, or extend the time for compliance of the notice to a date certain, but in no case shall time for compliance be extended past ninety (90) days from the date of the notice.

(8) If the hearing officer finds that a nuisance exists or existed, an order for damages sustained on account thereof, the costs of abatement and a civil penalty of no more than \$500.00 for the initial offense and no more than \$750.00 for each repeat offense, or any other fine authorized under the Iowa code, damages sustained on account thereof and the costs of abatement by the city may be entered to be paid to the city.

(9) The determination of the hearing officer is a final administrative decision.

(10) Failure to request a hearing within ten (10) days of receipt of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the nuisance exists and the nuisance will be abated by the city as indicated in the notice and the costs will be collected as indicated in the notice.

(11) Notwithstanding the foregoing, in the event of an alleged violation of subsection 17-1.01(k), then:

(a) The hearing shall be held not later than twenty-one (21) days after the request for hearing was filed.

(b) Notice of the date and place of such hearing shall be given in writing at least ten (10) days in advance thereof to the person requesting the hearing and shall be mailed to the owners of record of all property within 250 feet of the subject property at their address as shown by the records of the Polk County Auditor.

(c) In determining what action is reasonably necessary to abate the nuisance, the hearing officer shall give priority to any physical improvement or change in procedures or operations offered by the property owner or person responsible for the property which is reasonably calculated to remedy the nuisance. The hearing officer may afford the property owner or person responsible for the property a reasonable time within which to demonstrate that actions proposed by such owner or person will actually remedy the nuisance.

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

FORM APPROVED:

Vicky Long Hill, Assistant City Attorney

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Attest:

I, Donna Boetel-Baker, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 99- 1968), passed by the City Council of said City at a meeting held June 21, 1999, signed by the Mayor on June 21, 1999, and published as provided by law in the Business Record on July 5, 1999. Authorized by Publication Order No. 6179.

Donna Boetel-Baker, CMC/AAE, City Clerk