

ORDINANCE NO. 14,164

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, and amended by Ordinance No. 13,943, passed May 7, 2001, and amended by Ordinance No. 14,092, passed June 3, 2002, by amending Sections 102-2, 102-42, 102-89 and 102-124 of Chapter 102, Street, Sidewalks, Skywalks and Other Public Places, regarding exempting abutting property owners from maintenance of multi-use recreational trails.

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

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, amended by Ordinance No. 13,943, passed May 7, 2001, and amended by Ordinance No. 14,092, passed June 3, 2002, is hereby amended by amending Sections 102-2, 102-42, 102-89 and 102-124 of Chapter 102, Street, Sidewalks, Skywalks and Other Public Places, regarding exempting abutting property owners from maintenance of multi-use recreational trails, as follows:

**Sec. 102-2. Maintenance of border area.**

The abutting property owner shall maintain the border area in a well kept and safe condition free from defects, garbage, junk, rubbish, debris, solid waste, nuisances, obstructions or any other hazards, except as permitted in section 98-54 or 98-58 of this Code; provided, however the property owner shall not be required to remove diseased trees or dead or fallen tree limbs. The abutting property owner may be liable for damages caused by failure to maintain the border area. This section shall not apply to multi-use recreational trails, traffic control devices, traffic signs, parking meters, newspaper boxes, United States postal boxes, or those erected for home delivery; or street trees planted in conformance with city standards, provided they do not constitute a safety hazard, obstruction of view or nuisance.

**Sec. 102-42. Maintenance.**

(a) The owner of any property abutting a public sidewalk shall maintain the sidewalk in a safe condition, in a state of good repair, and free from defects. The abutting property owner may be liable for damages caused by failure to maintain the sidewalk.

(b) In the sole discretion of the director of public works and if funds and personnel are available for the same, the Public Works Department may, but is not required to, conduct voluntary inspections of city sidewalks to assure that the owners of property abutting sidewalks are complying with the maintenance requirements imposed above.

(c) If, through voluntary inspection or otherwise, it comes to the attention of the director of public works that an owner of property abutting a sidewalk is not complying with the maintenance requirements imposed above, then the director shall cause to be served upon the property owner, by certified mail at the property owner's last known address as shown by the records of the county auditor, notice that if the property owner does not cure the defects in the sidewalk within ninety (90) days from the date of the notice, the City may, in the sole discretion of the City Council, do so and assess the costs of such work against the property to be collected as taxes pursuant to Municipal Code Section 102-72.

(d) Failure of the abutting property owner to complete the maintenance within ninety (90) days of the date of notice shall be a civil infraction punishable by a fine of \$500.00 for a first offense and \$750.00 for a second offense and shall be available to the City as a remedy in addition to all other remedies in this section.

(e) In the sole discretion of the director of public works and if funds and personnel are available for the same, the Public Works Department may, but is not required to, place barricades or other devices or materials in such places as may serve to protect the public from sidewalks not in compliance with the maintenance requirements imposed above. If such protective devices are placed by the department, they shall not be removed until all sidewalk defects are corrected. Premature removal of the protective devices shall be a civil infraction punishable by a fine of \$500.00 for a first offense and \$750.00 for a second offense and shall be available to the city as a remedy in addition to all other remedies in this section.

(f) The director of the public works department shall keep records of all sidewalk complaints received, all voluntary sidewalk inspections conducted, notices of defects sent, protective devices placed and sidewalk work done by the City for a period of three (3) years from the date of the action and shall make the same available at a reasonable cost to all persons who claim to have been damaged or injured as a result of the failure to maintain a sidewalk by an abutting property owner.

- a. This section shall not apply to multi-use recreational trails.

#### **Sec. 102-89. Cost of repair.**

The cost of repairing sidewalks and of taking up or removing dangerous sidewalks shall be paid by the owners of the property fronting thereon and shall be assessed against such property in accordance with section 102-72 of this division. This section shall not apply to multi-use recreational trails.

**Sec. 102-124. Obligation of owner or person in possession of real estate.**

(a) The owner of any real estate abutting a public sidewalk shall remove snow, ice and accumulations from sidewalks within a reasonable time but in no case more than 48 hours following the cessation of the weather event by which it was deposited; provided, however, that in extraordinary weather circumstances the director of public works or his or her designated representative may extend the period of time for removal under this section. In those extraordinary weather situations the director of public works or his or her designated representative will deliver to representative news media a statement indicating the amount of additional time the owners or those in possession of the real estate shall have to remove snow, ice and accumulations from sidewalks.

(b) In any proceedings charging a violation of this article, proof that the particular violation described constitutes a violation of this article, together with proof that the particular violator 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 to create a rebuttal presumption that such violator was the party violating this article.

(c) The owners or contract buyers, agents, tenants and/or lessees of all residential dwellings, commercial establishments and/or real estate upon which a violation of this article is found shall be jointly and severally responsible for compliance with this article and jointly and severally liable for any fines or damages awarded under this article.

(d) If snow, ice or accumulations are not removed as required in subsection (a) of this section, including in any extraordinary weather circumstances, within the time designated, the director of public works or his or her designated representative or any police officer is authorized to issue a civil citation, pursuant to I.C. § 364.22(4), and/or a notice of administrative assessment for civil penalty indicating the owner or person in possession of the real estate is in violation of this section and is subject to the

penalties provided for in section 102-127 of this division.

The owner of any real estate abutting a multi-use recreational trail which also serves as a public sidewalk bordering a public street shall only be required to remove snow, ice and accumulations for a width of three (3) feet upon such public sidewalk, except that the owner of any real estate abutting the Inter Urban Trail Multi-Use Recreational Trail along Urbandale Avenue from Fiftieth Street to Sixty-third Street shall be exempt from such requirement.

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

FORM APPROVED:

Ann DiDonato, Assistant City Attorney

Preston A. Daniels, Mayor

Attest:

I, Donna V. 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. 02-2911), passed by the City Council of said City at a meeting held December 16, 2002 signed by the Mayor on December 16, 2002 and published as provided by law in the Business Record on December 30, 2002 Authorized by Publication Order No. 3490.

Donna V. Boetel-Baker, City Clerk