

ORDINANCE NO. 15,107

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 102-42, 102-43, 102-73, 102-75, 102-77, 102-79, 102-81, 102-83, 102-84 and 102-89 and by repealing Section 102-88, relating to sidewalk maintenance compliance and sidewalk construction.

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

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 102-42, 102-43, 102-73, 102-75, 102-77, 102-79, 102-81, 102-83, 102-84 and 102-89 and by repealing Section 102-88, relating to sidewalk maintenance compliance and sidewalk construction, as follows:

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 department director and if funds and personnel are available for the same, the city inspector may, but is not required to, conduct voluntary inspections of city sidewalks following receipt of a sidewalk complaint to assure that the owners of property abutting sidewalks are complying with the maintenance requirements imposed above.
- (c) (1) If, through sidewalk complaint and voluntary inspection or otherwise, it comes to the attention of a city inspector that an owner of property abutting a sidewalk is not complying with the maintenance requirements imposed above, then the city inspector may 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 of the sidewalk defect and of the requirement to cure said defect and/or reconstruct the defective sidewalk or a portion thereof within one-hundred eighty (180) days from the date of said notice.

- (2) In response to said notice, the property owner may submit a written request to the city inspector for an one-hundred eighty (180) day extension of time to cure the sidewalk defect and/or reconstruct the defective sidewalk, for a total period, as extended, of up to three-hundred sixty (360) days from the date of the notice to cure and/or reconstruct.
 - (3) Said notice, if given, shall also state the nature of any immediate or interim repairs or precautions required to be undertaken by the property owner following notice but prior to repair of the sidewalk defect, including but not limited to temporary asphalt wedges, barricading, and placement of protective devices.
 - (4) Said notice, if given, shall also state that if the property owner does not make the required immediate or interim repairs, and/or cure the sidewalk defect and/or reconstruct the sidewalk within one-hundred eighty (180) days from the date of the notice or within such extended time as approved by the city inspector, the City may pursue action against the property owner for civil infraction, and/or may give notice and take action pursuant to sections 102-83 and 102-84 of this code, and/or may pursue any other legally available remedy. Failure of the abutting property owner to complete the maintenance within one-hundred eighty (180) days from the date of the notice or within such extended time as approved by the city inspector may be punishable as a municipal infraction by a civil penalty pursuant to section 1-15 of this code.
- (d) Curing of sidewalk defect and/or sidewalk reconstruction as ordered by this section shall be undertaken by property owners in accordance with division 2 of this article, except that the following code sections shall not apply: sections 102-71, 102-74, 102-81, 102-91, 102-92 and 102-93.
 - (e) The department director may, in his or her sole discretion, establish policies and procedures relating to income-based subsidies, and to reimbursement of part or all of the cost to repair a sidewalk defect determined by the city inspector at time of inspection to have been caused by city activities and/or city trees, for property owners receiving notice of sidewalk defect. Any subsidies or reimbursements authorized in accordance with such policies shall be subject to funding availability, as determined by the department director in his or her sole discretion.
 - (f) In the sole discretion of the department director and if funds and personnel are available for the same, the public works department, at the request of the city inspector, 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 may be punishable as a municipal infraction by a civil penalty pursuant to section 1-15 of this code, which penalty shall be available to the city as a remedy in addition to all other legally available remedies.

- (g) The department director 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, to the extent required by open records law, make the same available 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.
- (h) This section shall not apply to multi-use recreational trails as defined pursuant to section 114-1 of this code.
- (i) Nothing set forth in this section shall be construed so as to prevent or preclude the city, or the department(s) and department director(s) responsible for enforcement of this article, from taking any emergency action or nuisance abatement action, including but not limited to notice and assessment of costs, as deemed appropriate pursuant to chapter 42 of this code in the event that sidewalk defects are determined by the department director to constitute a nuisance.

Sec. 102-43. Definitions - maintenance of sidewalks.

As used in divisions 1 and 2 of this article, the following words have the following meanings:

"Defect" or "defective condition" means a public sidewalk has a defect or defective condition when it exhibits one or more of the following characteristics:

- (1) Vertical separations equal to three-fourth inch (3/4") or more;
- (2) Horizontal separations equal to three-fourth inch (3/4") or more;
- (3) Holes or depressions equal to three-fourth inch (3/4") or more;
- (4) Spalling over fifty percent (50%) of a single square or panel of sidewalk with one or more depressions equal to one-half inch (1/2") or more;
- (5) A single square or panel of sidewalk cracked in such a manner that no part thereof has a piece greater than one (1) square foot, or is cracked in such a manner that it constitutes danger or potential danger to the public;
- (6) A sidewalk with any part thereof missing to the full depth;

- (7) A deviation on the staked and constructed grade equal to three-fourth inch (3/4") or more;
- (8) Covered in whole or in part with weeds or other plants, garbage, junk, rubbish, debris, solid waste, bird or animal droppings or any nuisances, obstructions or hazards which makes or tends to make pedestrian travel either dangerous or impractical.

"*City inspector*" means any city employee designated by the department director to undertake the city's inspection and notice actions as set forth in divisions 1 and 2 of this article.

"*Department director*" means the director of any city department charged with enforcement of any section of divisions 1 and 2 of this article, or his or her designee.

"*Maintain*" or "*maintenance*" means the duty to remove and replace a public sidewalk, or a portion of a public sidewalk, all work to be performed in accordance with established city specifications in effect at the time the work is commenced, so as to render the sidewalk free from defect.

"*Property owner*" or "*owner*" means the record holder of legal title, and the contract purchaser, if there is one of record, and may be referred to as "person" in division 2 of this article.

"*Sidewalk*" means the paved portion of that area between the curb lines of the roadway and the adjacent property lines intended for the use of pedestrians.

Sec. 102-73. Plans and specifications.

Permanent sidewalks shall be constructed and/or reconstructed in accordance with the current edition of the SUDAS Design Manual and the SUDAS Standard Specifications as adopted by city council and current edition of the City of Des Moines Supplemental Specifications to the SUDAS Standard Specifications. Sidewalks shall be constructed of brick, stone, Portland cement concrete or architectural pavers, all of which shall be subject to approval by the city engineer.

Sec. 102-75. Permit required.

- (a) No person shall construct, reconstruct or remove any sidewalk either for the purpose of rebuilding or replacing the sidewalk whether ordered by the city council or not, or proceed with the work of removing the present sidewalk, excavating, filling or depositing material for the construction or reconstruction of any sidewalk, unless such person shall obtain a permit from the building official or his or her designee. However, no sidewalk permit shall be required for a sidewalk section which is included in the construction, reconstruction or removal of the driveway approach, when such work is undertaken pursuant to a driveway approach permit issued under article V of this chapter.

- (b) City work forces and city contractors are exempt from the permit requirement when engaged in the construction or reconstruction of sidewalks at the direction of and on behalf of the city.

Sec. 102-77. Permit fees.

The fee for a permit to construct, reconstruct or remove any sidewalk shall be in the amount(s) set forth in the approved schedule of fees on file in the office of the city clerk. A copy of the permit, together with the written agreement referred to in section 102-76 of this division, shall be filed and preserved with the building official or his or her designee.

Sec. 102-79. Determination of propriety of work; commencement and completion dates; extension of time.

Before granting any permit to remove, construct, reconstruct or repair any sidewalk, the building official or the building official's designee shall determine the propriety of the work and shall state in all permits issued when the work is to be commenced and when the sidewalk is to be completed. The time of completion for the construction or reconstruction of any sidewalk may be extended by the building official or his or her designee when in his or her judgment the extension is deemed necessary; however, for permits issued to property owners for cure of sidewalk defects and/or sidewalk reconstruction ordered under section 102-43 of this code, the permit shall not be extended beyond the time allowed by the city inspector pursuant to section 102-43(c).

Sec. 102-81. Withholding permit issuance.

The building official or his or her designee may withhold the issuance of any permit for the construction or reconstruction of any sidewalk for a sufficient period to determine the necessity for the construction of such sidewalk.

Sec. 102-83. Failure to comply with division; notice.

Whenever any sidewalk is constructed, reconstructed or repaired which does not conform to this division and with the specifications referred to in this division or where any sidewalk is removed, constructed, reconstructed or repaired without obtaining a permit therefor as provided in this division or is not restored, constructed, reconstructed or repaired at the time provided for and stated in the permit obtained, the department director may serve upon the property owner or his or her agent and upon the contractor or party interested and doing such work a notice to obtain a permit therefor, if not already obtained, or if the sidewalk is in the course of construction to stop the work, and

if the sidewalk work has been completed to obtain a permit therefor to construct, reconstruct or repair sidewalk within five days from the receipt of notice, as the case may be, in the proper manner and of proper materials as required by this division and specifications referred to in this division.

Sec. 102-84. Failure to comply with notice; work done by city.

If the property owner or the contractor or any one of them shall fail to comply with this division, after notice by certified mail, the city engineer may cause the sidewalk to be constructed, reconstructed or repaired in a proper manner and of proper materials and report to the city council the complete cost thereof if known. The cost shall be assessed to the property fronting thereon and in the manner provided in section 102-72 of this division for assessing the cost of constructing, reconstructing or repairing of sidewalks.

Sec. 102-88. Repealed by Ord. No. 15,107.

Sec. 102-89. Cost of repair.

The cost of repairing sidewalks and of taking up or removing dangerous sidewalks due to emergency or nuisance determinations, pursuant to section 102-43(i) and/or chapter 42 of this code, 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 as defined pursuant to section 114-1 of this code.

Section 2. This ordinance shall be in full force and effect as of July 1, 2012, after its passage and publication as provided by law.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, 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. 12-0815), passed by the City Council of said City at a meeting held May 21, 2012 signed by the Mayor on May 21, 2012 and published as provided by law in the Business Record on June 8, 2012. Authorized by Publication Order No. 7915.

Diane Rauh, City Clerk