

ORDINANCE NO. 15,143

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 3-23, 102-596, 102-613, 102-615, 102-616 and 102-617 regarding the issuance, renewal and revocation of leases, licenses and permits for encroachments onto public rights-of-way and other city property and the removal of any such encroachments existing without proper authority.

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 amended by Ordinance No. 14,236 passed May 5, 2003, as amended by Ordinance No. 15,127 passed September 10, 2012, be and is hereby amended by amending Sections 3-23, 102-596, 102-613, 102-615, 102-616 and 102-617 regarding the issuance, renewal and revocation of leases, licenses and permits for encroachments onto public rights-of-way and other City property and the removal of any such encroachments existing without proper authority, as follows:

Sec. 3-23. Limitations on hearings.

The hearing on an appeal from a decision made by a city official pursuant to the Code sections listed below shall be subject to the following restrictions and limitations:

(1) *Section 114-485.15. Impoundment of a vehicle.*

The sole issue before the administrative hearing officer shall be whether there was probable cause as defined in section 114-485.17 to impound the vehicle and personal property contained within the vehicle in question. The department causing the vehicle to be impounded shall carry the burden of establishing that there was probable cause to impound the vehicle in question. The administrative hearing officer shall decide only that either (i) there was probable cause to impound the vehicle and contents, or (ii) there was no probable cause to impound the vehicle and contents.

(2) *Section 102-615. Removal of encroachments.*

The sole issue before the administrative hearing officer shall be whether the removal of the encroachment by the city was properly authorized pursuant to Article VIII of Chapter 102 of this Code. If it is determined that the removal was not properly authorized pursuant to Article VIII of Chapter 102 of this Code, or if the appellant alleges that the removed property was improperly disposed of by the city, the administrative hearing officer shall refer the matter to the city attorney for further consideration and processing as a claim against the city.

Sec. 102-596. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Breakaway mailbox means a mailbox approved by the U.S. Postal Service and used for the curbside delivery of mail, which is supported by a wood post no greater in cross section than four inches square or by a post with a strength no greater than a two-inch diameter standard steel pipe. Two such posts may be used to support a cluster of four or more mailboxes.

City engineer means the head of the engineering department or the engineer's duly authorized designee.

Department means any city department charged with the enforcement of any section enumerated in this article.

Department Director means the head of any city department or that person's duly authorized designee.

Encroachment, in addition to its usual meaning, means any tent or other material configured or used for habitation or shelter, architectural projection, chimney, stairway, platform, step, railing, door, grate, vault, sign, banner, canopy, marquee, awning, newsrack, trash container, bench, areaway, obstruction, opening or structure.

Newspaper delivery receptacle means a device for receiving and containing newspapers delivered for and at the request of a subscriber to the newspaper.

Newsrack means an encroachment in the form of an unmanned device for the vending or free distribution of newspapers or news periodicals; provided, however, that this definition shall not include newspaper delivery receptacles.

Public property, in addition to its usual meaning, means any street, highway, avenue, alley, sidewalk, skywalk bridge, public place or other real property owned or controlled by the city.

Sec. 102-613. Failure to secure or renew license or lease.

- (a) Any person failing to secure a license or lease required under this article shall cause the subject encroachment to be removed immediately from the public property.
- (b) Any encroachment license or lease not renewed on or before its date of expiration shall automatically expire, and the encroachment used or maintained thereunder shall immediately be removed by the licensee or lessee without further notice from the city engineer.
- (c) Any license or lease issued pursuant to this article which has expired may be reinstated by payment of the required fee plus an administrative charge of ten percent for each month or part thereof for which the fee is overdue, up to a maximum of 100 percent of the original fee.
- (d) Any encroachment with an expired license which has reached a penalty of 30 percent may be dealt with in accordance with subsections 102-615(b) and (c) and section 102-617 of this article when the city engineer deems such action appropriate.

Sec. 102-615. Removal.

- (a) Whenever the city council, after notice and hearing, has revoked or refused to renew any license or lease required under this article, the owner or user of the subject encroachment shall cause it to be removed immediately from the public property.
- (b) Whenever a department finds any encroachment constructed, used or maintained without the required license or lease having been secured or maintained in effect, the director of that department may, as an alternative to any other remedy allowed by this Code, order the removal of the encroachment by giving written notice of such order by certified mail to the address of the owner or user of the encroachment, if known, or, if such address is not known, he or she may post such notice on or next to the encroachment. The notice shall state the name, address and telephone number of the department director; the location and a description of the encroachment; that the encroachment is in violation of the requirements of this article; that the owner or user is ordered to cause immediate removal of the encroachment from the public property; that the encroachment may be removed by the city after a date designated in the notice, which date shall be no less than ten days after the date the notice was mailed or first posted, as the case may be; and that the owner or user may appeal the order pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within ten days after the date the notice containing the order was mailed or first posted. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest the order. If such notice is given and the encroachment is still on public property after the date specified in the notice or if an appeal is made and denied or withdrawn, the department director may cause removal of the encroachment.
- (c) As an alternative to any other remedy allowed by this Code and notwithstanding any other section of this article, a department director may cause immediate removal of any encroachment on public property where its construction, use or maintenance unreasonably endangers the safety of persons or property or unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic. Any person aggrieved by the removal of an encroachment pursuant to this section may appeal the removal pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within ten days after the date such encroachment was removed. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest the removal. If the administrative hearing officer determines that the city improperly caused removal of an encroachment, the matter shall be referred to the city manager and city attorney to recommend an appropriate remedy to the city council.

Sec. 102-616. City Council hearings; notice.

- (a) At least ten days prior to the date of any city council hearing required under this article, the city engineer shall send by certified mail with return receipt a written notice to the address of the responsible person designated in the application for the license or lease or, if no such application was filed, to the address of the owner

or user of the encroachment or, if the identity of the owner or user is unknown, the city engineer shall post such notice on or in the near vicinity of the encroachment. The notice shall state the address and telephone number of the city engineer; the subject matter to be discussed at the hearing; and the date, time and place of the hearing.

- (b) At any city council hearing required under this article, the owner or user of the subject encroachment may be represented by legal counsel, may call witnesses and present evidence on his or her behalf.

Sec. 102-617. Violations and penalties.

- (a) Any person who violates the provisions of this article shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.
- (b) Every encroachment, the removal of which is required by this article, shall also constitute a public nuisance subject to abatement pursuant to the procedures set forth in Article VI of Chapter 42 of this Code.
- (c) The processes set forth in this article are not exclusive remedies for the city and alternate relief may be sought pursuant to any other sections of this Code or Iowa law that may be applicable.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law. However, any administrative appeal for which the initial notice of appeal was received by the City Clerk prior to the date of such publication shall continue to be governed by the procedural rules in effect at the time such appeal was so received.

FORM APPROVED:

Roger K. Brown, 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. 12-1785), passed by the City Council of said City at a meeting held November 19, 2012 signed by the Mayor on November 19, 2012 and published as provided by law in the Business Record on December 7, 2012. Authorized by Publication Order No. 8200.

Diane Rauh, City Clerk