

ORDINANCE NO. 15,883

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 102-602, 102-604, 102-605, 102-606, 102-607, 102-608, 102-610, 102-611, 102-612, 102-614, 102-616, 102-617, 102-625 and repealing Sections 102-609, 102-618, 102-619, 102-620, 102-6021, 102-6022, 102-623, and 102-626, relating to encroachments.

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 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 102-602, 102-604, 102-605, 102-606, 102-607, 102-608, 102-610, 102-611, 102-612, 102-614, 102-616, 102-617, 102-625 and repealing Sections 102-609, 102-618, 102-619, 102-620, 102-6021, 102-6022, 102-623, and 102-626, relating to encroachments, as follows:

Sec. 102-602. Areaway permit.

- (a) The engineering department will issue areaway permits for placement of encroachments as defined by subsections 102-608(g) of this article.
- (b) Areaway permits are an annual permit with renewal on April 1st of each year.
- (c) Areaway permits are issued for temporary encroachments within the City right-of-way. These encroachment types may include: building-mounted signage, awnings/canopies, trash receptacles, planters, bike racks, or other temporary or removable obstructions.
- (d) Areaway permits shall be subject to the areaway permit fees set forth in the Schedule of Fees.

Sec. 102-604. Exemptions from article.

Nothing in this article shall be held in any way to prohibit or regulate the maintenance or placement of the following:

- (1) Manholes, pits or covers in connection with the construction and operation of any water, telephone, gas or electric connections, pipes or conduits or the use of any public property by public service corporations to whom such right has been granted by franchise.
- (2) Footings or foundations of buildings constructed in accordance with the city building code.
- (3) Any official flag which projects over public property at least eight feet above grade and not closer than two feet from a curbline measured horizontally.

- (4) Any fascia sign on and parallel to any wall or building at least eight feet above grade and projecting 18 inches or less over public property.
- (5) Temporary encroachments that are regulated under the city building code, provided that encroachments closer than four feet to the curblines shall receive the approval of the city engineer.
- (6) Encroachments within the skywalk system. Any such encroachments shall be regulated under article IV of this chapter.
- (7) Newspaper delivery receptacles when installed by any person who publishes a newspaper of general circulation, as defined by state law, for and at the request of subscribers to the newspaper, so long as the receptacles do not encroach in, upon or over the traveled portion of the public way.
- (8) Fire escapes.
- (9) Portable flower pots and planters, not permanently attached to the sidewalk, provided: i) an unobstructed pathway over the sidewalk is maintained having a width of at least six feet, or the full width of any sidewalk less than six feet wide; ii) the pot or planter occupies less than 8 square feet of area; iii) the pot or planter does not create a hazard to pedestrian or vehicular travel; and iv) no signage is placed on the pot or planter.
- (10) Breakaway mailboxes.
- (11) Mailboxes constructed prior to May 1, 2003, that are not breakaway mailboxes. However, the burden of establishing that an existing mailbox was constructed prior to May 1, 2003, shall be upon the owner. Any mailbox, when replaced, shall be replaced with a breakaway mailbox.
- (12) The use of a sidewalk or other city-owned property for a sidewalk cafe operated pursuant to a sidewalk cafe permit agreement or sidewalk cafe lease agreement pursuant to section 102-576.

Sec. 102-605. License construct.

Except as provided in subsection 102-610(d) of this article, no person shall construct, use or maintain any temporary or removeable encroachment not provided for in subsection 102-602 under, in, upon or over the surface of any public property, unless and until a written license is obtained from the city pursuant to this article. No such license shall be required for any encroachment exempted pursuant to section 102-604 of this article.

Sec. 102-606. Application for license.

An applicant interested in obtaining a license to construct or maintain a temporary or removeable encroachment shall provide the following information to the city engineer:

- (1) The name, address and telephone number of the applicant.
- (2) The name, address and telephone number of a responsible person whom the city may notify or contact at any time concerning the encroachment.
- (3) The exact location and dimensions of the encroachment. The applicant shall also provide a plat of survey and metes and bounds legal description to define the licensed area, if determined necessary by the city engineer.
- (4) With respect to vehicle impact protection devices, the applicant shall submit detailed plans showing the location and dimensions of all proposed vehicle impact

protection devices and their associated footings, device spacing, color and material, color of the reflective band, and dimensions to existing utilities in the border area (surface and subsurface). If the plan identifies vehicle impact protection devices outside of the border area, said plan must clearly identify the border area boundary. The applicant shall also provide a plat of survey and metes and bounds legal description to define the licensed area, if determined necessary by the city engineer.

Sec. 102-607. Criteria for issuance of license.

- (a) No license required under this article shall be granted for any encroachment until the required fee has been paid, sufficient proof of insurance, which sufficiency shall be determined in the sole discretion of the city engineer, and until all items required in section 102-606 have been filed with and approved by the city engineer.
- (b) No license shall be granted or renewed for any encroachment when it would unreasonably obstruct the rights of travel which the general public has on any public property or would unreasonably interfere with or impede the flow of pedestrian or vehicular traffic.
- (c) No license shall be granted or renewed for any encroachment that would be placed or erected upon a sidewalk so as to occupy more than 25 percent of the width of the sidewalk and a minimum sidewalk width of six (6) feet must be maintained at all times.
- (d) No license shall be granted or renewed for any encroachment that would be placed or erected at a street corner within the vision clearance triangle described in section 114-14 of this Code.
- (e) No license shall be granted or renewed for any sign which extends over the surface of any public property when the city has contracted with another public body to prohibit the encroachment of signs over the surface of such public property.
- (f) No license shall be granted or renewed for any permanent encroachments under, in, upon or over the surface of any public alley or street right-of-way, such as steps, stairways, building footings, architectural projections, and balcony overhangs. All permanent encroachments shall require vacation of the right-of-way and purchase of a permanent easement for building encroachment.

Sec. 102-608. Special restrictions for newsracks and trash containers.

- (a) In addition to the general regulations set forth in this article, newsracks and trash containers on public property are subject to this section.
- (b) No newsrack shall be located:
 - (1) Within five feet of any fire hydrant, fire or police alarm box, or other emergency facility.
 - (2) Within two feet of any marked crosswalk or any driveway.
 - (3) Where it restricts access to a bus shelter or a bus bench.
 - (4) Where it interferes with loading or unloading at the front and rear doors of buses.
 - (5) On any handicap access ramp.
 - (6) In such a manner as to reduce the clear space for the passageway of pedestrians on sidewalks to a continuous and unobstructed width of less than six feet.
 - (7) On the right-of-way of any street where parking is prohibited on both sides for all or any portion of the day or within 50 feet of such street on the right-of-way of any

intersecting street, except that this shall not apply to DX1, DX2, or DXR commercial district zoned areas.

- (8) Within the vision clearance triangle as defined in Section 114-14 of this code.
- (c) Newsracks on public street rights-of-way shall only be placed either:
 - (1) Not more than one foot back from the face of the curb;
 - (2) Not more than six inches from a public utility pole or a traffic sign pole located near the curb; or
 - (3) Parallel to the wall of a building and not more than six inches from the wall.Newsracks placed near the curb shall be placed so that the opening through which newspapers or news periodicals are dispensed does not face the curblines.
- (d) No newsrack shall exceed five feet in height or two feet in depth. The maximum width of a newsrack shall be computed by multiplying by 2 1/2 feet the number of laterally installed vending compartments, which number shall not include vending compartments installed on top of other such compartments.
- (e) A newsrack which is permitted through an areaway permit may be moved to a new site without the requirement of a new application and fee, provided that a site plan showing the exact new location is filed with the city engineer no later than the next business day of the city after the move and provided that the placement of the newsrack at the new site is in compliance with this article and any other applicable legal requirements.
- (f) No privately owned trash container shall be located on a public street right-of-way, other than alleys, except for those containers required to facilitate solid waste collection from residential premises by the city pursuant to sections 98-51 through 98-58, inclusive, of this Code.
- (g) All privately owned newsracks and trash containers on public property shall obtain a valid areaway permit, issued by the engineering department.
- (h) No privately owned newsracks and trash containers shall be placed on public property if such placement would cause such public property to fail to comply with the Americans with Disabilities Act.
- (i) It shall be the responsibility of the owner/user of any newsrack/trash container placed on public property to maintain an accurate up-to-date listing with the city engineer of the locations at which each such newsrack/trash container is placed.

Sec. 102-609. Reserved.

Sec. 102-610. License issuance, expiration; proration of fee; temporary placement of newsracks.

- (a) The city engineer shall review the information provided by each applicant and may grant a license which he or she determines to be in compliance with this article and any other applicable legal requirements. If the city engineer elects to proceed with a license for an encroachment, the city engineer shall draft a license agreement and send the agreement to the applicant for signature.
- (b) Upon receipt of the original version of the license agreement executed by the applicant, and authorization is requested to construct, use, and or maintain an encumbrance within city-owned property, including public right-of-way, a license may be granted for a period of up to three years. Any license granted for a period of more than three years must be

approved by the city council, after notice and a public hearing is held as required by law. The fee for each license shall be negotiated between the city and licensee but in no event shall such fee be less than the fair market value of the interest which a licensee shall acquire.

- (c) Any person desiring to immediately place one or more newsracks on public property shall have the right to so place such a newsrack prior to the filing of the application and the payment of the fee, provided that the newsrack is placed and thereafter maintained in such a manner as to be in compliance with this article and any other applicable legal requirements and provided that the required application is filed and the required fee paid no later than the next business day of the city after the newsrack is so placed.
- (d) When authorization is requested to construct, use and maintain vehicle impact protection devices pursuant to this article in the border area, a license may be granted for a period of up to three years by the city engineer, or upon approval of the city council for such a period exceeding three years as the city council may determine after notice and hearing as required by law. The fee or rental for such space shall be negotiated between the city and the licensee but in no event shall such fee or rental be less than the fair market value of the interest which a licensee shall acquire.

Sec. 102-611. Indemnification.

In addition to any terms and conditions negotiated between the city and the licensee, upon signing a license under this article, the licensee shall be deemed to have agreed to hold the city harmless from and indemnified against all damages arising from the construction, use or maintenance of the encroachment. Any person who publishes a newspaper of general circulation as defined by state law and who installs delivery receptacles for such newspaper in accordance with subsection 102-604(7) of this article, shall be deemed to have agreed to hold and shall hold the city harmless from and indemnified against all damages arising from the installation, placement, use or maintenance of such receptacles.

Sec. 102-612. Insurance.

Before granting a license under this article, the city engineer may require liability insurance in an amount satisfactory to the city engineer and sufficient to hold the city harmless from and indemnified against all damages arising from or growing out of the construction, use or maintenance of such encroachment, when the city engineer has determined that such insurance is required by the public interest; provided, however, that such liability insurance shall not be required with respect to any newsrack licensed under this article.

Sec. 102-614. Revocation of license.

- (a) In addition to any terms negotiated between the city and the licensee, the city engineer may revoke any license issued under this article for any of the following reasons:
 - (1) Failure to comply with the requirements of the license, this article, other applicable provisions of this code, or any other applicable legal requirements.
 - (2) Fraud, deceit or misrepresentation in connection with an application for a license.

- (3) City engineer determination that the space where an encroachment is located shall be required for public use.
- (4) For any other reason in the city's interest.
- (b) When a license is revoked by the city engineer pursuant to (3) or (4), the grantee shall be entitled to a partial fee refund for any remaining portion of the license term, which refund shall be prorated to the month of removal of the encroachment. In all other cases where a license is revoked, no refund of any portion of the required annual fee shall be paid to the grantee.
- (c) The city engineer may revoke a license and order removal of the encroachment and restoration of the public property to its condition prior to the installation of the encroachment by giving written notice of such revocation and order.

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

- (a) At least ten days prior to the date of any city council hearing required under section 102-615 of 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 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 section 102-615 of 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. Violation constitutes a public nuisance.

- (a) Every encroachment, the removal of which is required by this article, shall also constitute a public nuisance subject to abatement and enforcement pursuant to the procedures set forth in article VI of chapter 42 of this Code.
- (b) 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, as well as any terms negotiated between the city and the licensee.

Secs. 102-618—102-623. Reserved.

Sec. 102-625. Payment of fees.

All fees for licenses granted under this article shall be paid to the city treasurer.

Secs. 102-626--102-655. Reserved.

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

FORM APPROVED:

Lisa A. Wieland, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest: I, P. Kay Cmelik, 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. 20-0653), passed by the City Council of said City at a meeting held on April 20, 2020 signed by the Mayor on April 20, 2020 and published and provided by law in the Business Record on May 8, 2020. Authorized by Publication Order No. 11114.

P. Kay Cmelik, City Clerk