



Roll Call Number

Agenda Item Number

37

Date May 7, 2018

An Ordinance entitled, "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 102-596, 102-606, 102-610, 102-613, 102-614, and 102-615, and adds and enacts new Section 102-610.1, relating to encroachments",

(Council Communication No. 18-230)

presented.

Moved by \_\_\_\_\_ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Kathleen Vanderpool by A.G.
Kathleen Vanderpool
Deputy City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL.

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED
Mayor

City Clerk

ORDINANCE NO. \_\_\_\_\_

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 102-596, 102-606, 102-610, 102-613, 102-614, and 102-615, and adds and enacts new Section 102-610.1, 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 amending Sections 102-596, 102-606, 102-610, 102-613, 102-614, and 102-615, and adds and enacts new Section 102-610.1, relating to encroachments, as follows:

**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:

Barrier means a man-made object, other than a bollard, which is used to obstruct the passage of vehicles and to separate pedestrian and vehicular traffic.

Border Area means as defined in section 102-1.

Bollard means a vertical post designed and used to obstruct the passage of vehicles and to separate pedestrian and vehicular traffic.

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, vehicle impact protection device, areaway, obstruction, opening or structure, or failure to maintain the border area as provided in Section 102-2 of this Code.

Event venue means a structure that hosts gatherings of people with a seating capacity of 2,500 or more.

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.

*Vehicle* means as defined in section 114-1.

*Vehicle impact protection device* means a device that is designed, engineered, and sited so as to effectively separate areas of pedestrian and vehicular travel and prevent vehicles from entering areas which are solely intended for pedestrian use and travel and shall be comprised of bollards, barriers, or a combination of both.

**Cross reference(s)**--Definitions generally, § 1-2.

**Sec. 102-606. Application for license ~~or lease~~.**

An application for a license ~~or lease~~ to construct an encroachment shall be filed with the city engineer upon a form provided by the city engineer for that purpose and shall include the following information:

- (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) A site plan showing 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 newsracks, the applicant shall provide sufficient information to demonstrate compliance with the requirements of either section 102-608 or section 102-609 of this article, as applicable.
- (5) 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. 102-610. License ~~or lease~~ issuance, expiration; proration of fee; temporary placement of newsracks.**

- (a) Except as provided in subsections (b), ~~and (c) and (e)~~ of this section, all licenses ~~or leases~~ required by this article shall be granted by the city engineer and shall expire on March 31 following the date of granting. There shall be no proration of the required fee if the license ~~or lease~~ does not run for a full year. The city engineer shall review each application and shall grant each license ~~or lease~~ which he or she determines to be in compliance with this article and any other applicable legal requirements. The city engineer shall promptly send by certified mail with return receipt a written notice advising each applicant of his or her

action in approving or denying a license ~~or lease~~. Any applicant who has been denied a license ~~or lease~~ by the city engineer shall have the right to a hearing before the city council by filing a written appeal with the city engineer within ten days from receipt of notice of denial.

- (b) However, when authorization is requested to construct, use and maintain a pedestrian passageway under or over a street, alley or public way connecting two properties on the opposite sides of that street, alley or public way, a license ~~or lease, as applicable,~~ may be granted for a period of three years upon approval of the city council, or 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 pedestrian passageways shall be negotiated between the city and licensee ~~or lessee~~ but in no event shall such fee or rental be less than the fair market value of the interest which a licensee ~~or lessee~~ shall acquire.
- (c) When authorization is requested to construct, use and maintain spaces for the parking of motor vehicles under, upon or over a street, alley or public way, a license ~~or lease, as applicable,~~ may be granted for a period of three years upon approval of the city council or 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 ~~or lessee~~ but in no event shall such fee or rental be less than the fair market value of the interest which a licensee ~~or lessee~~ shall acquire.
- (d) 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.
- (e) 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 three years upon approval of the city council or 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. 102-610.1. License of Vehicle Impact Protection Devices.**

The city engineer is authorized to grant a license for vehicle impact protection devices in the border area that meet the requirements set forth in this article, all other applicable provisions of the Municipal Code, and the following requirements:

- (1) Vehicle impact protection devices must be immediately adjacent to and border an event venue as defined in this article.
- (2) Applicant shall demonstrate to the satisfaction of the city engineer that there is not sufficient room within applicant's adjacent property for the location of vehicle impact protection devices to adequately provide protection for the size of crowds using the event venue.
- (3) All vehicle impact protection devices shall be located outside of the vision clearance triangle in accordance with section 114-14 of the municipal code. Vehicle

- impact protection devices shall be located outside a 5 foot x 5 foot area at the top of the Americans with Disability Act (ADA) curb ramp at intersections.
- (4) Vehicle impact protection devices shall not be linked in any manner, including with ropes or chains. Bollards shall be no larger than 12 inches in diameter, no higher than 4 feet from the top of sidewalk, and they must have a white or yellow reflective band. Barriers shall be no longer than 15 feet and no higher than 4 feet from the top of sidewalk.
  - (5) Vehicle impact protection devices shall be a minimum of 30 inches from the back of curb and, when possible, placed in line with street furniture, light poles, and tree wells. In accordance with section 102-607(b), devices within the accessible path for pedestrians as defined by the ADA must be a minimum of 48 inches from perimeter edge to perimeter edge. Outside of the accessible path, the minimum distance from perimeter edge to perimeter edge can be reduced to 36 inches. Removable or retractable bollards can be spaced closer than 36 inches, but for no more than a continuous distance of 50 feet and they cannot be placed within the accessible path.
  - (6) The design, installation, location, size, spacing, color and height of all vehicle impact protection devices within the border area must comply with the applicable requirements of the Americans with Disabilities Act and its implementing regulations. It is the obligation of the -licensee to comply with those requirements at its sole cost and expense at all times, including the cost of moving or removing those vehicle impact protection devices that do not comply as determined by the city engineer.
  - (7) Vehicle impact protection devices shall be repaired and maintained to the appearance consistent with what was approved by the city engineer for installation. Licensee shall be responsible for maintaining and repairing the vehicle impact protection devices, including but not limited to any alterations or damage caused by third parties.
  - (8) Vehicle impact protection devices granted a license are placed within the border area at -licensee's sole risk and cost. The city shall not be required to incur any cost associated with the the vehicle impact protection devices.
  - (9) The location of vehicle impact protection devices and their associated footings shall not interfere with access to any utilities located and/or operated within the border area. All licenses for vehicle impact protection devices shall be issued subject to existing and future utilities within the border area. The license agreement shall provide that, in the event any vehicle impact protection devices are impacted, removed or damaged for the installation, construction, repair, reconstruction, relocation or maintenance of utilities within the border area, licensee shall be solely responsible for the repair and reinstallation of all vehicle impact protection devices at licensee's sole expense. All damage to utilities resulting from the installation, maintenance and use of vehicle impact protection devices shall be at the sole cost of the licensee.
  - (10) Licensee shall obtain all required permits and licenses required therein, including but not limited to sidewalk permits and/or ROW excavation permits.
  - (11) Additional requirements as may be deemed advisable by the city engineer with respect to a specific location.

**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 and the public property restored to its condition prior to the installation of the encroachment.
- (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 and the public property restored to a condition acceptable to 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. 102-614. Revocation of license or lease.**

- (a) ~~The city engineer council, after notice and hearing,~~ may revoke ~~or refuse to renew~~ any license ~~or lease~~ 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 ~~or lease~~.
  - (3) ~~City engineer council~~ determination that the space where an encroachment is located shall be required for public use; provided, however, that the city shall not revoke a license of newsrack space in the skywalk system based on a determination that the space is required for public use unless the public use involves a change in the skywalk system or property adjacent thereto, which brings the newsrack into violation of this article or any other applicable legal requirements, and such determination shall not be made until after the city council has received the recommendations of the urban design review board.
  - (4) For any other reason in the city's interest.
- (b) ~~When a license or lease is revoked by the city engineer pursuant to (3) or (4), council based on its determination that the space where the encroachment is located shall be required for public use,~~ 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. to be computed on the basis of 1/12 of the required annual fee that has been paid multiplied by the number of unexpired whole months of the year remaining after the date of removal of the encroachment. In all other cases where a license ~~or lease~~ 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. Notice shall be given by certified mail to the address of the licensee 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 location and a description of the encroachment; the reason for revocation; that the owner or user is ordered to cause immediate removal of the encroachment from the public property; restoration of the public property, that the encroachment may be removed by the city and the public property restored 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 city engineer may cause removal of the encroachment, restore the public property to its condition prior to the license and licensee shall be responsible for such cost.

#### **Sec. 102-615. Removal.**

- (a) Whenever the city ~~engineer-council, after notice and hearing,~~ has revoked ~~or refused to renew any a~~ license ~~or lease~~ required under this article ~~or the license has expired,~~ 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.

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

FORM APPROVED:

Kathleen Vanderpool by AD  
Kathleen Vanderpool  
Deputy City Attorney