

Date April 20, 2020


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 102-602, 102-604, 102-605, 102-606, 102-607, 102-608, 102-610, 102-611, 102-612, 102-614, 102-616, 102-17, 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",

presented. **(Council Communication No. 20-184)**

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

FORM APPROVED:

(First of three required readings)



 Lisa A. Wieland
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED

CERTIFICATE

I, P. Kay Cmelik, 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.

_____ 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 102-602, 102-604, 102-605, 102-606, 102-607, 102-608, 102-610, 102-611, 102-612, 102-614, 102-616, 102-17, 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, 102-17, 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 ~~license~~.

- (a) The engineering department will issue areaway permits ~~licenses~~ for placement ~~on~~ of encroachments as defined by subsections 102-608(g) and ~~102-416(e)~~ of this article.
- (b) ~~Areaway permits licenses will be no larger than two inches by two inches. 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, ~~steps/stairways~~, or other ~~temporarytemporary or removable~~ obstructions.~~
- (d) Areaway permits shall be subject to the areaway permit fees set forth in the Schedule of Fees.
- (e) ~~Each areaway permit license will indicate the following:~~
 - ~~(1) The current permit year;~~
 - ~~(2) The current areaway permit license number; and~~
 - ~~(3) The phrase "City of Des Moines, Engineering Department" with the current phone number.~~
 - ~~(d) Annually the design and color of the areaway permit license will change.~~
 - ~~(e) Areaway permit licenses shall be available for issue within five working days of payment of the areaway fee.~~

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 curbline shall receive the approval of the city engineer.
- (6) Encroachments, ~~other than newsracks,~~ within the skywalk system. Any such encroachments, ~~other than newsracks,~~ shall be regulated under article IV of this chapter, ~~while newsracks within the skywalk system shall be regulated under this article and shall be exempt from 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) ~~Public benches, which are regulated under article VI of this chapter, inclusive.~~
- (10) ~~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.~~
- (110) Breakaway mailboxes.
- (121) 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.
- (132) 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 ~~or lease to~~ 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 ~~or~~

~~lease, as applicable,~~ is obtained from the city pursuant to this article. No such license ~~or lease~~ shall be required for any encroachment exempted pursuant to section 102-604 of this article.

Sec. 102-606. Application for license.

~~An application~~An applicant interested in obtaining a license to construct or maintain an temporary or removeable encroachment shall ~~be filed with the city engineer upon a form provided by the city engineer for that purpose and shall include~~ 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) ~~A site plan showing the~~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. 102-607. Criteria for issuance of license ~~or lease~~.

- (a) No license ~~or lease~~ 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 ~~an application with complete plans shall~~ all items required in section 102-606 have been filed with and approved by the city engineer.
- (b) No license ~~or lease~~ 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 ~~or lease~~ 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 ~~or lease~~ 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 ~~or lease~~ 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; ~~provided, however, that newsracks within the skywalk system are subject to section 102-609 of this article and are exempt from 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 ~~licensed~~ 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, ~~except within the city skywalk system,~~ shall ~~display~~ obtain a valid areaway permit ~~license~~, 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. ~~It shall be the responsibility of the owner/user of the newsrack/trash container to affix the areaway permit license to the newsrack/trash container so that it is clearly visible for inspection.~~
- (i) ~~The location of placement of the areaway permit license on the newsrack/trash container shall be determined by the city engineer.~~
- ⊕ 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. ~~Newsracks within skywalk system~~ Reserved.

- ~~(a) — No newsrack shall be placed within the skywalk system unless an appropriate lease has been granted by the city pursuant to this section. Newsracks on public property other than within the skywalk system are subject to section 102-608 of this article and are exempt from this section.~~
- ~~(b) — Enclosed newsracks within the skywalk system shall be placed only within modular shell units. Each modular shell unit shall contain space for insertion of at least two separate enclosed newsracks, with one being installed above the other, and shall be constructed with unenclosed newsracks, for the free circulation of newspapers or news periodicals, attached to the exterior of each such unit. The city shall be responsible for installing and maintaining all such modular shell units, including the attached unenclosed newsracks, and the parties leasing enclosed newsrack spaces within such units shall be responsible for installing and maintaining their enclosed newsracks within such units. Modular shell units and newsracks shall comply with particular written specifications relating to the color, dimensions and construction thereof, which specifications shall be developed by the city engineer and approved by the skywalk committee.~~
- ~~(c) — Modular shell units shall be made available by the city for leasing within the skywalk system at those locations which satisfy each of the following:~~
 - ~~(1) — Modular shell units shall be permitted within areas entirely owned and controlled by the city. Such units also shall be permitted within skywalk corridor or skywalk bridge easement areas, provided the owner of the corridor or bridge improvements consents in writing.~~
 - ~~(2) — Modular units shall be installed parallel to a wall, or parallel to a railing fronting on an atrium area, provided the owner of the atrium area consents in writing.~~
 - ~~(3) — No modular unit shall be located in front of a transparent window where there is an outward view of any public property. A modular unit shall be permitted in front of a~~

- ~~(4) Each proposed location shall be of sufficient dimensions to allow for the installation of a modular shell unit so that reasonable use of the newstracks shall not reduce the clear space for the passageway of pedestrians to less than 14 feet.~~
- ~~(5) Installation of a modular shell unit at the proposed location shall not unreasonably obstruct either the view of skywalk signage or graphics, signage or graphics placed by a building owner within or immediately adjacent to the skywalk system, the operation of any electronic or closed circuit video surveillance monitoring equipment or of any telephone equipment, the private use of adjacent private property, or the use of any doorway.~~
- ~~(6) No modular shell unit shall be located within 175 feet from any other such unit within the skywalk system, such distance to be measured along the centerlines of the corridors or bridges. Whenever two proposed locations meeting all other requirements of this section are within 175 feet of each other, the city engineer shall determine the location at which a modular shell unit shall be permitted. In making such determination, the city engineer shall endeavor to give preference in the following order:
 - ~~a. A location not on a skywalk bridge;~~
 - ~~b. A location on city-owned property other than on a skywalk bridge; and~~
 - ~~c. The location where the larger number of newstracks may be located within the modular shell unit.~~~~
- ~~(d) All leases for enclosed and unenclosed newstrack spaces within the skywalk system shall terminate on March 31 following the date of commencement. On the first business day of the city in March of each year, the city engineer shall hold a hearing for the purpose of reallocating all available newstrack spaces among the applicants therefor. At such hearings, the city engineer shall consider all applications received five or more days prior to the date of the hearing.~~
- ~~(e) At least 15 days prior to the date of the hearing, the city engineer shall send by certified mail with return receipt a written notice addressed to each party currently leasing one or more such newstrack spaces and to each person who has theretofore advised the city engineer of the desire to lease one or more newstrack spaces. Such notice shall advise of the date of termination of the existing lease, if applicable; of the right to make application to the city engineer for a new lease concerning one or more newstrack spaces; of the final date for receipt of such application; and of the time, date and place of the hearing. Such notice shall also contain a map of the skywalk system clearly designating all locations where newstrack spaces are to be made available for leasing.~~
- ~~(f) If at such hearing fewer newstrack spaces are available than the number of applicants desiring to use spaces at one or more locations or if applicants cannot agree upon the particular space at a single location to which each shall be assigned, the city engineer shall endeavor to treat all such applicants fairly and equally, to the fullest extent possible, in allocating the available newstrack spaces. In such event, allocation of spaces by drawing lots shall be the preferred method.~~
- ~~(g) No more than one newstrack space shall be leased at any one location for the circulation of any one newspaper or news periodical, unless newstrack space at such location is available to each of the applicants desiring to circulate other newspapers or news periodicals at such~~

~~location. However, any lease granted so as to allow more than one newsrack space at any one location for the circulation of any one newspaper or news periodical shall terminate after approval by the city engineer of a new application from an applicant desiring to use such space to circulate a newspaper or news periodical for which space is not otherwise available at such location. Such termination shall be effective on the date five days after the date of mailing by the city engineer of written notice of termination, which notice shall be sent by certified mail with return receipt to the address of the responsible person designated in the application for the existing lease. The city engineer shall mail such notice as soon as reasonably possible after approval of such new application, along with a refund of the prorated, prepaid rental for the unexpired portion of the lease term. The city engineer shall grant the new applicant a lease commencing on the day after the date of termination of the existing lease.~~

- ~~(h) — After such hearing, the city engineer shall allocate the available newsrack spaces among the applicants therefor and shall thereafter issue the appropriate leases upon receipt by the city of the required annual rental from the lessees. All such leases shall designate April 1 following as the date of commencement of the term and shall be in a form approved by the legal department.~~
- ~~(i) — If any newsrack spaces remain available for leasing after April 1, leases for such remaining spaces thereafter shall be granted by the city engineer to subsequent applicants on a first come, first served basis in the order of application filed with the city engineer; provided, however, that subsection (g) of this section shall apply to leases granted pursuant to this subsection.~~
- ~~(j) — If changes take place in the skywalk system or property adjacent thereto so as to make new newsrack spaces available for leasing after April 1, the city engineer shall schedule a hearing, within three months after such changes take place, for the purpose of allocating such new spaces to the applicants therefor. The requirements of subsections (d) through (h), inclusive, of this section are applicable to any hearing scheduled pursuant to this subsection.~~
- ~~(k) — The lessor of the newsrack space shall be responsible for properly securing the newspaper vending units within the modular shell unit and shall do so in such a manner as to not damage the appearance or structural integrity of the modular shell unit.~~
- ~~(l) — The lessor shall assume all responsibility for damages of any type to the vending units.~~

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

- ~~(a) Except as provided in subsections (b), (c) and (e) of this section, all licenses 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 does not run for a full year. The city engineer shall review the information provided by each applicant and shall may grant each 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. 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. Any applicant~~

~~who has been denied a license 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) ~~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. 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 may be granted for a period of up to three years. Any license granted for a period of more than three years must be -upon approval by of the city council, ~~or for such a period exceeding three years as the city council may determine~~ after notice and a public hearing is held as required by law. The fee ~~or rental for such pedestrian passageways for each license~~ shall be negotiated between the city and 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.
- (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 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.~~
- (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.
- (ed) 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 ~~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. 102-611. Indemnification~~Conditions of acceptance of license or lease.~~

In ~~addition to any terms and conditions negotiated between the city and the licensee or lessee, upon accepting signing~~ a license ~~or lease~~ under this article, the ~~party receiving the license or lease~~ licensee ~~or lessee~~ shall be deemed to have agreed to hold ~~and shall 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 ~~or lease~~ 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 or lessee, ~~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; ~~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 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. ~~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. 102-616. City Council hearings; notice.

- (a) At least ten days prior to the date of any city council hearing required under this 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 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 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 or lessee.

Secs. 102-618—102-623. Reserved.

~~Sec. 102-618. License fees for encroachments under, upon or in public property.~~

~~Any person constructing, maintaining or using any area, vault room, or other encroachment under, upon or in any part of any public property shall obtain a license therefor from the city as provided by section 102-605 of this article and shall pay to the city, in advance, a fee in the amount set in the schedule of fees adopted by the city council by resolution, except as provided in subsection 102-610(b) and (c) and sections 102-620 and 102-623 of this article.~~

~~Sec. 102-619. Lease fees for newsracks within skywalk system.~~

~~Any person who has been granted the right to lease one or more enclosed or unenclosed newsrack spaces within the skywalk system, as provided by section 102-609 of this article, shall pay to the city, in advance, a fee in the amount set in the schedule of fees adopted by the city council by resolution.~~

Sec. 102-620. License for grates and openings:

- (a) ~~Any person constructing, maintaining or using any grate, door, coal hole, coal chute, or other similar encroachment under, upon or in any public property shall pay to the city, in advance, a fee in the amount set in the schedule of fees adopted by the city council by resolution.~~
- (b) ~~When grates, vaults and openings are secured and sealed in such a manner that they cannot be opened as determined by the city engineer, no fee under this section shall be charged. The property owner assumes all liability and financial responsibility for any cavity remaining under city property and shall hold the city harmless for any and all damages resulting from any failure of the opening, vault or cavity. The property owner shall also assume all financial responsibility for any and all repairs to both private and city property resulting from any failure of an opening, vault or cavity. The city retains the right to inspect all openings sealed in this manner to ascertain that the seal remains intact.~~
- (c) ~~Any property owner or user of an opening, vault or grate reopening it after it has been sealed shall immediately notify the city engineer that the area is in use and apply for an areaway license for such area.~~
- (d) ~~Failure to notify the city engineer under this section shall subject the owner/user to that enforcement action provided for in this chapter which the city engineer deems appropriate.~~

Sec. 102-621. Leases and fees for encroachments over public property.

~~Any party constructing, maintaining or using any sign, banner, canopy, marquee, awning or other encroachment over any public property shall obtain a lease therefor from the city as provided by section 102-605 of this article and shall pay to the city, in advance, a fee in the amount set in the schedule of fees adopted by the city council by resolution except as provided in subsections 102-610(b) and (c) and section 102-222 of this article. Any neighborhood association or organization recognized by the city, or any association or organization which has tax exempt status under section 501(c)(3) of the United States Internal Revenue Code, or succeeding legislation, shall be exempt from the payment of fees to the city under this section for any temporary street banner allowed by resolution of the city council. The size of a sign shall be determined by its measurement on a vertical plane. The size of an awning shall be determined by the area covered when the awning is in the lowered position.~~

Sec. 102-622. Lease fee for architectural projections:

~~Any person constructing, maintaining or using any oriel window, cornish belt course, air conditioner, ventilating or heating vent, architectural projection or other similar projection which encroaches more than 18 inches over public property and which does not serve as a marquee or canopy and which does not contain usable floor space shall pay to the city, in advance, a fee in the amount set in the schedule of fees adopted by the city council by resolution; provided, however, that a separate fee shall be charged as specified in section 102-621 of this article for any sign attached to such projection.~~

~~Sec. 102-623. License fee for coin-operated telephones installed upon public property.~~

~~The license fee for coin-operated telephones installed upon public property shall be in the amount set in the schedule of fees adopted by the city council by resolution. This fee shall be payable to the city treasurer on a monthly basis.~~

Sec. 102-625. Payment of fees.

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

~~Sec. 102-626. Notice of fee payment due.~~

~~The city treasurer shall send out, annually, notice to the licensees or lessees that the fee required by this article is due. Failure to give or receive such notice shall not constitute a defense to sections 102-615 and 102-617 of this article.~~

Secs. 102-~~627~~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