



**Roll Call Number**

**Agenda Item Number**

34

**Date** April 19, 2021

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 repealing Chapter 102, Article VI, relating to benches",


**(Council Communication No. 21-186)**

presented.

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	
_____ Mayor				

**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.

\_\_\_\_\_ 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 repealing Chapter 102, Article VI, relating to benches.

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, by repealing Chapter 102, Article VI, relating to benches, as follows:

**ARTICLE VI. ~~BENCHES~~ Repealed by 15,---.**

**Secs. 102-406 – 102.455. Reserved.**

**Sec. 102-406. Authority to install.**

~~To aid the public in the comfortable and convenient use of the streets, persons may install and maintain on the border areas benches for the free use of pedestrians, and to provide advertising matter upon such benches, all subject to the regulations, limitations and qualifications set forth in this article.~~

**Sec. 102-407. Nuisances.**

~~This article shall not be construed as authorizing the creation or maintenance of a nuisance as prohibited by article VI of chapter 42 of this Code.~~

**Sec. 102-408. Damages.**

~~All damages occurring in consequence of the installation, use or maintenance of any bench licensed in accordance with this article or because of any defect therein shall be assumed by the party using or maintaining the bench.~~

**Sec. 102-409. Records.**

~~The city engineer shall keep a record of all benches on, upon or over the surface of any public street right of way in the city, with the fee for each as prescribed by this article.~~

**Sec. 102-410. License and permit required.**

~~No person shall install, construct, use or maintain in or upon the surface of any public street in the city any bench unless and until a written license or agreement to engage in the business of~~



maintaining benches and a separate permit for each bench location is obtained from the city council.

**Sec. 102-411. Power to grant licenses and permits; contents.**

All licenses required by this article shall be granted by the city council and shall contain the name of the person securing the license and the date granted. All permits required by this article shall be granted by the city council and shall contain the name of the person holding the license under which the permit is issued, and the number, the size and the location of the permitted bench.

**Sec. 102-412. Repealed by Ord. No. 14,095.**

**Sec. 102-413. Conditions of granting license.**

Upon being granted a license under this article, the licensee shall be deemed to have agreed to indemnify and save and keep harmless the city from any and all costs, expenses, liability for damages, or injuries to persons or property or liability of any kind whatsoever arising from or growing out of the construction, use or maintenance of the licensee's benches. The licensee shall also be deemed to have agreed to comply in all respects with the provisions and requirements of this Code and other city ordinances relating to the construction, use or maintenance of any bench.

**Sec. 102-414. Repealed by Ord. No. 14,095.**

**Sec. 102-415. License and permit fees.**

Upon the approval by the city council of an application for a license to engage in the business of maintaining benches in accordance with this article, the city treasurer shall collect a license fee in the amount set in the schedule of fees adopted by the city council by resolution, payable in advance, in lieu of all other license fees. Upon approval by the city council of an application to place any bench in accordance with this article, unless an annual lump sum payment is due to the City pursuant to an agreement between the City and a third party bus bench provider, the city treasurer shall also collect, in advance, for each bench an encroachment or areaway fee as set forth in section 102-618 of this chapter payable annually on or before April 1 of each year. No refund of any fee shall be made except as provided in sections 102-420 and 102-426.

**Sec. 102-416. Permitted bench locations.**

(a) A permit shall not be issued for any bench unless the location satisfies each of the following requirements:

- (1) No bus bench may be placed at any location other than a posted bus stop at which a bus regularly stops and for which the Metropolitan Transit Authority has made a written request for a bench.
- (2) Benches shall be located at least two (2) feet from the curb and shall be placed so as not to obstruct pedestrian traffic flow or the cleaning of snow, ice, or debris from sidewalks.



- ~~(3) Benches shall be placed as close as possible to the posted bus stop, provided that no bus bench shall be placed more than twenty (20) feet away from the posted bus stop.~~
- ~~(4) All benches shall be placed facing the street on which the bus stop is located and shall be placed parallel to the curb to the greatest degree practical. If the placement meets all the other conditions, a bench may be placed at an angle facing traffic not to exceed thirty-five (35) degrees from parallel.~~
- ~~(5) No bench shall be positioned in such a manner that it creates a negative traffic impact.~~
- ~~(6) No bench shall be placed at any bus stop where a permanent bus shelter is also located.~~
- ~~(7) No location shall have more than one (1) bus bench.~~
- ~~(b) Whenever a licensee ceases to be a posted bus stop or a location at which a bus regularly stops, then the licensee shall remove the bench within thirty (30) days of written notification from the City Engineer.~~
- ~~(c) If an existing bench is removed, such bench shall not be replaced or relocated to another location unless the new bench and location meets all of the requirements of this code.~~

**Sec. 102-417. Insurance.**

~~Before granting a license under this article, the city council may require liability insurance in an amount determined to be satisfactory to the city and sufficient to hold the city harmless from and indemnified against any and all damages or claims for damages allegedly arising from or growing out of the construction, installation, use or maintenance of any bench when, in the judgment of the city council, the public interest requires it.~~

**Sec. 102-418. Issuance and renewal of permits and licenses.**

- ~~(a) Any person desiring a license and permit to install and maintain any bench under this article shall submit to the city engineer a written application, which application shall set forth the dimensions, construction and intended location of the bench. The license and each permit shall be for a period of one year, commencing April 1, provided that the city council may consider applications for additional locations at any time with the approval of locations to terminate on April 1.~~
- ~~(b) Upon receiving a request for a bench location from the Metropolitan Transit Authority and an application for such bench, the city engineer shall send notice and an opportunity to comment to all property owners within two hundred fifty (250) feet of the proposed location, and to the recognized neighborhood association, if any, for the area in which the bench would be located.~~
- ~~(c) Before issuing a permit for any location, the city council shall consider any objections or comments concerning the proposed bench location.~~
- ~~(d) Permits for individual locations of benches shall be issued according to priority in the date of filing applications, provided that all the requirements of this Code are fulfilled, except that a licensee who applies for renewal before expiration of an old permit shall be granted priority over a new permit for the same location.~~



- ~~(e) Each bench on public property shall display a valid areaway permit license, issued by the engineering department, and shall display the name and current phone number of the licensee. It shall be the responsibility of the owner of the bench to affix the areaway permit and notice of the licensee's name and phone number to the bench as directed by the city engineer or the city engineer's representative.~~
- ~~(f) Any permit granted under this article may be renewed upon the expiration thereof by payment of the annual permit fee and the annual areaway fee as set forth in section 102-415 of this article, provided that the licensee, the location and the condition of the bench continue to comply with all the terms and conditions of this article for issuance of a new permit.~~

**~~Sec. 102-419. Revocation of license.~~**

- ~~(a) Any license granted under this article may, in the discretion of the city council, after notice and public hearing, be revoked whenever the license is granted in error or on the basis of incorrect information supplied or in violation of any ordinance or regulation of any of the sections of this Code or any other law or ordinance or for any other reason in the public interest.~~
- ~~(b) At least ten (10) days prior to the hearing required under this section, 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. The notice shall state the address and telephone number of the city engineer; the basis for the proposed license revocation; and the date, time and place of the hearing.~~
- ~~(c) The revocation of a license shall constitute the revocation of each permit held by the licensee.~~

**~~Sec. 102-420. Refund of license fees.~~**

~~Any licensee whose license is revoked prior to the termination of the one-year period for which a license fee is paid in accordance with section 102-415 of this article shall be entitled to a refund computed on the basis of 1/12 of the annual fees for the license and for each permit held by the licensee as provided in this article, multiplied by the number of unexpired months of the year.~~

**~~Sec. 102-421. Mailing of resolution revoking license.~~**

~~The city clerk shall mail a copy of the resolution revoking a license issued by this article to the person in whose name the license was granted at the address appearing on the license.~~

**~~Sec. 102-422. Specifications for design, construction and installation.~~**

~~No permit for the installation, construction, use or maintenance of any bench shall be granted by the city council unless the bench shall be designed to discourage vandalism and overturning. All benches shall be constructed in a manner so that no sharp edges, protrusions or corners will snag or in any way damage the clothing of or cause injury to anyone using or brushing up against the bench.~~



Any bench installed under the provisions of this article, or under a contract, shall conform to the following requirements:

- (1) The bench shall be a minimum of six (6) feet and a maximum of eight (8) feet in length, shall not exceed forty-two (42) inches in height or thirty (30) inches in depth, and shall have a minimum seat height of sixteen (16) inches.
- (2) The bench shall be of durable construction, using materials satisfactory to and approved by the city engineer, and shall be firmly mounted on a paved surface in a secure manner that will prevent overturning or other movement of the bench.
- (3) The bench shall be placed on a paved surface, consisting of paving bricks, paving block, concrete, or other durable material approved by the city engineer; such paved surface to extend a minimum of two (2) feet in front of the bench along the full length of the bench.
- (4) The area between the bench and the bus loading area shall be paved with durable material and shall be wheelchair accessible in a manner approved by the city engineer.

**Sec. 102.423. Maintenance of bench and surrounding area; administrative penalties for failure to maintain.**

- (a) All surfaces of all benches shall be kept free of splinters, sharp edges or protrusions and shall be kept in a smooth and well-maintained condition at all times. The licensee or contractor shall inspect all benches on a regular basis, and shall promptly repair any damage or deterioration.
- (b) The licensee or contractor shall remove accumulated snow and ice from the surface of the bench, an area a minimum of two (2) feet wide immediately in front of the bench, and an area a minimum of three (3) feet wide from the bench to the street curb, within a reasonable time but in no case more than 48 hours following posting at <http://www.dmgov.org> that the snow ordinance is no longer in effect; provided, however, that in extraordinary weather circumstances the city engineer or the engineer's designee may provide additional time for removal under this section. Such snow or ice shall not be deposited upon the traveled portion of any public right-of-way, street, avenue, alley, public square or other city property within the city, but may be deposited in the public border area between the sidewalk and street.
- (c) The licensee shall keep the bench and the paved surface surrounding the bench free of trash and debris, clean and free of graffiti.
- (d) Failure to comply with subsections (a) through (c) of this section shall subject the licensee or contractor to an administrative penalty as provided in the scheduled administrative penalties adopted by the city council by resolution.
- (e) Penalties shall be paid in full within thirty (30) days of the issuance of the notice.
- (f) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to the violator by the city engineer; the engineer's designee or any police officer. Service of the notice may be by regular mail or delivery in person. Such notice shall include:
  - (1) a statement that the violator has a right to an administrative hearing regarding the violation;



- (2) ~~a statement that the violator may file a written request for hearing as set forth in section 102-126.07. The request of hearing shall stay payment of the administrative penalty until the hearing is decided. If issuance of the notice of violation is upheld, the violator shall have 30 days from issuance of the hearing decision to pay the administrative penalty.~~

**~~Sec. 102-424. Advertising.~~**

~~Only such advertising matter shall be placed on benches that is ordinarily displayed in other advertising mediums. No bench shall display obscene statements, words or pictures. No beer, wine, alcoholic beverages, nightclubs, taverns or adult entertainment businesses as defined in chapter 134 of this code shall be advertised. No signs or words which shall confuse or distract traffic shall be placed on any bench. Advertising shall only be placed on the backrest of the bench, facing the street, and not on the ends of the bench nor the property side of the backrest.~~

**~~Sec. 102-425. Objection of abutting property owner or neighborhood association.~~**

~~If the owner of the frontage upon the street within a radius of two hundred fifty (250) feet from the location of any bench files a written objection with the city clerk stating that the business will be or is adversely affected by such bench, or if any recognized neighborhood association files a written objection with the city clerk for any bench located within or adjacent to the neighborhood association boundaries, the city council may, after notice and public hearing as provided in Sec. 102-426, in its discretion, revoke the permit for the bench and order the licensee or contractor to remove the bench within thirty (30) days. If the licensee or contractor fails to remove the bench within the 30-day period, the bench shall be removed in accordance with section 102-427 of this article.~~

**~~Sec. 102-426. Order to remove.~~**

- (a) ~~The city council may in its discretion after notice and public hearing order the removal of any bench from any location whenever the bench is in violation of any ordinance or regulation of any of the sections of this Code or any other law or ordinance or for any other reason in the public interest; provided, however, that the city council shall give the licensee or contractor a period of thirty (30) days in which to complete the removal.~~
- (b) ~~At least ten (10) days prior to the hearing required under this section, 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. The notice shall state the address and telephone number of the city engineer; the basis for the proposed permit revocation; and the date, time and place of the hearing.~~
- (c) ~~The paved surface that the bench is mounted on shall be considered part of the bench installation, and removal of the bench for any reason shall also require the licensee or contractor to remove the paved surface and to restore the border area to a condition that matches the surrounding border area, unless the city engineer directs that the paved surface should remain.~~
- (d) ~~Any licensee whose permit for a bench location is revoked prior to the termination of the one-year period for which a permit fee is paid in accordance with section 102-415 of this~~

article shall be entitled to a refund computed on the basis of 1/12 of the annual fees for the permit, multiplied by the number of unexpired months of the year.

**~~Sec. 102-427. Failure to remove.~~**

~~Upon the failure of the licensee or contractor to remove any bench upon expiration or revocation of the permit for such bench pursuant to this article, the city engineer may remove such bench and charge to the licensee or contractor the cost of removal and storage. Upon the failure of the licensee or contractor to pay the costs of removal and storage within thirty (30) days of billing, the city engineer may sell the bench and apply the proceeds to the cost of sale, storage and removal and shall return the balance, if any, to the licensee.~~

**~~Sec. 102-428. Repealed by Ord. No. 14,095.~~**

**~~Sec. 102-429. Cancellation for failure to install.~~**

~~If a licensee fails to install a bench for the use of the public at any location within 90 days after the city council grants the permit therefor, the permit shall be automatically cancelled.~~

**~~Sec. 102-430. Notification of claims against licensee or contractor.~~**

~~The city shall, as promptly as possible, notify the licensee or contractor under this article of any claim filed against him or her which is alleged to have arisen from the installation or maintenance of any public bench of the licensee.~~

**~~Secs. 102-431-102-455. 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