

ORDINANCE NO. 13,648

"AN ORDINANCE to amend the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 11,804, passed April 20, 1992, and amended by Ordinance No. 11,950, passed March 15, 1993, and amended by Ordinance No. 13,518, passed August 18, 1997, and amended by 13,587, passed March 23, 1998, and amended by Ordinance No. 13,634, passed August 17, 1998 by repealing Sections 8-8, 8-79, 8-130, 8-173, 8-393, 14-5.01, 16-134, 17-5, 17-6, 17-84, 17-87, 23-2.04, 25-31, 2A-36 and 2A-36.01, thereof and enacting new Sections 8-8, 8-79, 8-130, 8-173, 8-393, 14-5.01, 16-134, 17-5, 17-6, 17-84, 17-87, 23-2.04, 25-31, 2A-36 and 2A-36.01, all relating to civil violations and penalties.

Be It Ordained by the City Council of the City of Des Moines,

Iowa:

Section 1. That the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 11,804, passed April 20, 1992, and amended by Ordinance No. 11,950, passed March 15, 1993, and amended by Ordinance No. 13,518, passed August 18, 1997, and amended by 13,587, passed March 23, 1998, and amended by Ordinance No. 13,634, passed August 17, 1998 by repealing Sections 8-8, 8-79, 8-130, 8-173, 8-393, 14-5.01, 16-134, 17-5, 17-6, 17-84, 17-87, 23-2.04, 25-31, 2A-36 and 2A-36.01, thereof and enacting new Sections 8-8, 8-79, 8-130, 8-173, 8-393, 14-5.01, 16-134, 17-5, 17-6, 17-84, 17-87, 23-2.04, 25-31, 2A-36 and 2A-36.01, all relating to civil violations and penalties, as follows:

8-8. CIVIL VIOLATIONS AND PENALTIES.

(a) No persons, firm, or corporation shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy, or maintain any building or structure in the city, or cause the same to be done, contrary to or in violation of any provisions of this code.

(b) Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this subchapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates a provision of this subchapter after having previously been found guilty of violating the same provision of this subchapter at the same location or at a different location, shall be guilty of a repeat offense. This municipal infraction penalty shall be in addition to the penalties provided for in section 1-11 of this code.

Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including an order for abatement or injunctive relief, from the court in the same action or as a separate action.

8-79. CIVIL VIOLATIONS AND PENALTIES.

(a) No person shall install, alter, repair, maintain, improve, or use any electrical equipment, or perform any electrical work in the city, or cause the same to be done, contrary to or in violation of any of the provisions of this code.

(b) Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this subchapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates a provision of this subchapter after having previously been found guilty of violating the same provision of this subchapter at the same location or at a different location shall be guilty of a repeat offense. This municipal infraction penalty shall be in addition to the penalties provided for in section 1-11 of this code.

Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including an order for abatement or injunctive relief, from the court in the same action or as a separate action.

8-130. CIVIL VIOLATIONS AND PENALTIES.

(a) No person shall install, alter, repair, maintain, improve or use any mechanical equipment, or perform any mechanical work in the city, or cause the same to be done, contrary to or in violation of any of the provisions of this code.

(b) Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this subchapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates a provision of this subchapter after having previously been found guilty of violating the same provision of this subchapter at the same location or at a different location shall be guilty of a repeat offense. This municipal infraction penalty shall be in addition to the penalties provided for in section 1-11 of this code.

Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including an order for abatement or injunctive relief, from the court in the same action or as a separate action.

8-173. CIVIL VIOLATIONS AND PENALTIES.

(a) It shall be unlawful for any person, firm or corporation to install, alter, repair, maintain, improve or use any plumbing equipment or perform any plumbing work in the city, or cause the same to be done, contrary to or in violation of any of the provisions of this code.

(b) Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this subchapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal

entity who violates a provision of this subchapter after having previously been found guilty of violating the same provision of this subchapter at the same location or at a different location shall be guilty of a repeat offense. This municipal infraction penalty shall be in addition to the penalties provided for in section 1-11 of the municipal code.

Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including an order for abatement or injunctive relief, from the court in the same action or as a separate action.

8-393. ENFORCEMENT.

(a) A violation of any of the provisions of this subchapter may be grounds for temporary closing of the operation of the facility. The facility shall be reopened only with the approval of the Environmental Health Division upon a showing of compliance with the section of this article that has been violated.

(b) Any person, corporation, or other legal entity who violates or resists the enforcement of any of the provisions of this subchapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation, or other legal entity who violates a provision of this ordinance after having previously been found guilty of violating the same provision of this ordinance at the same location or at a different location shall be guilty of a repeat offense. Seeking a civil penalty in this section does not preclude the city from seeking alternative relief, including an order for abatement or injunctive relief, from the court in the same action or as a separate action.

14-5.01. CIVIL VIOLATIONS AND PENALTIES.

Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this chapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates a provision of this chapter after having previously been found guilty of violating the same provision of this chapter at the same location or at a different location shall be guilty of a repeat offense. This municipal infraction penalty shall be in addition to the penalties provided for in section 1-11 of this code.

Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including an order for abatement or injunctive relief, from the court in the same action or as a separate action.

16-134. CIVIL VIOLATIONS AND PENALTIES.

Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this subchapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Each day that a

municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates a provision of this subchapter after having previously been found guilty of violating the same provision of this subchapter at the same location or at a different location shall be guilty of a repeat offense. This municipal infraction penalty shall be in addition to the penalties provided for in section 1-11 of this code.

Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including an order for abatement or injunctive relief, from the court in the same action or as a separate action.

17-5. HEARING.

(1) Any person ordered to abate a nuisance may have, upon request, an appeal hearing with a hearing officer to determine whether a nuisance exists or existed.

(2) A request for a hearing shall be made in writing and filed with the city clerk within ten (10) days of receipt of the notice.

(3) Each request for hearing shall contain the address of the person requesting the hearing to which all further notices shall be mailed or served and shall state the basis for the appeal.

(4) The hearing shall be scheduled to be held as soon as practicable and no later than fourteen (14) days after the request for hearing was filed. The person requesting the hearing shall be notified in writing of the date and place of such hearing at least three (3) days in advance thereof. At such hearing the department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.

(5) The hearing officer may make a determination at the hearing and deliver the findings orally to be followed by a written decision. A written copy of the decision shall be placed in the file maintained by the department. If the determination is not given orally at the hearing, it shall be reduced to writing and shall be mailed to the appellant by regular mail.

(6) The hearing officer may find that violations exist or existed, may void the notice, order compliance with all or part of the notice, or extend the time for compliance of the notice to a date certain, but in no case shall time for compliance be extended past ninety (90) days from the date of the notice.

(7) If the hearing officer finds that a nuisance exists or existed, an order for damages sustained on account thereof, the costs of abatement and a civil penalty of no more than \$500.00 for the initial offense and no more than \$750.00 for each repeat offense, or any other fine authorized under the Iowa code, damages sustained on account thereof and the costs of abatement by the city may be entered to be paid to the city.

(8) The determination of the hearing officer is a final administrative decision.

(9) Failure to request a hearing within ten (10) days of receipt of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the nuisance exists and the nuisance will be abated by the city as indicated in the notice and the costs will be collected as indicated in the notice.

(10) Notwithstanding the foregoing, in the event of an alleged violation of subsection 17-1.01(k), then:

(a) The hearing shall be held not later than twenty-one (21) days after the request for hearing was filed.

(b) Notice of the date and place of such hearing shall be given in writing at least ten (10) days in advance thereof to the person requesting the hearing and shall be mailed to the owners of record of all property within 250 feet of the subject property at their address as shown by the records of the Polk County Auditor.

(c) In determining what action is reasonably necessary to abate the nuisance, the hearing officer shall give priority to any physical improvement or change in procedures or operations offered by the property owner or person responsible for the property which is reasonably calculated to remedy the nuisance. The hearing officer may afford the property owner or person responsible for the property a reasonable time within which to demonstrate that actions proposed by such owner or person will actually remedy the nuisance.

17-6. CIVIL ACTIONS - ALTERNATIVE RELIEF.

(a) Civil Violations and Penalties.

Any person, corporation, or other legal entity who violates any provision of this subchapter shall be liable for a municipal infraction punishable by a civil penalty of not more than \$500.00 for the initial offense and not more than \$750.00 for each repeat offense. Each day the municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates a provision of this subchapter after having previously been found liable for violating the same provision of this subchapter at the same location or at a different location shall be liable for a repeat offense.

(b) Alternate Relief.

Proceeding with the administrative hearing and/or seeking a civil penalty as authorized in this subchapter does not preclude the city from seeking alternative relief from the court in the same action or as a separate action, including an order for abatement or injunctive relief.

(c) When it is determined by the department that a person is an habitual violator, the city may file a civil action in the district court seeking an order enjoining the person from further violation of this subchapter on real estate owned or controlled by said person or real estate where said person acts as an agent, tenant, or lessee of any residential dwelling, commercial establishment and/or real estate within the city. The city may further request that upon entry of the injunction

that the court allow the city to abate further violations without notice and/or seek an order of contempt.

17-84. CIVIL VIOLATIONS AND PENALTIES.

Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this chapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates a provision of this chapter after having previously been found guilty of violating the same provision of this chapter at the same location or at a different location shall be guilty of a repeat offense.

Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including any order for abatement or injunctive relief, from the court in the same action or as a separate action.

17-87. CIVIL VIOLATIONS AND PENALTIES.

Any person who violates or resists the enforcement of any of the provisions of this subchapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Any person who violates a provision of this subchapter after having previously been found guilty of violating the same provision of this subchapter at the same location, shall be guilty of a repeat offense.

Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including but not limited to any order for abatement or injunctive relief from the court in the same action or as a separate action.

23-2.04. CRIMINAL AND CIVIL PENALTIES.

(a) Any person who violates or resists enforcement of any provisions of this chapter upon conviction shall be fined not more than five hundred dollars (\$500.00) for each offense. Each day that a violation is permitted to exist constitutes a separate offense.

(b) Any person who violates or resists the enforcement of any of the provisions of this chapter shall be guilty of a municipal infraction punishable by a civil penalty of five hundred dollars (\$500.00) for the initial offense and seven hundred and fifty dollars (\$750.00) for each repeat offense except as otherwise provided in section 23-168 of this chapter. Each day that a municipal infraction occurs constitutes a separate offense. Any person who violates this chapter after having previously been found guilty of violating the same code provision at the same location or at a different location shall be guilty of a repeat offense. This municipal infraction penalty shall be an alternative to the penalties provided for in subsection (a) of this section. Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including an order for abatement or injunctive relief, from the court in the same action or as a separate action.

25-31. PENALTIES.

Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this chapter shall be guilty of a municipal infraction punishable by a civil penalty of \$500.00 for the initial offense and \$750.00 for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation, or other legal entity who violates a provision of this chapter after having previously been found guilty of violating the same provision of this chapter at the same location shall be guilty of a repeat offense.

Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including an order for abatement or injunctive relief, from the court in the same action or a separate action.

2A-36. CRIMINAL VIOLATION AND PENALTIES.

Any person, corporation or other legal entity who violates or resists the enforcement of any provisions of this Ordinance, upon conviction shall be fined not more than five hundred (\$500) dollars for each offense. Each day that a violation is permitted to exist constitutes a separate offense.

2A-36.01. CIVIL VIOLATIONS AND PENALTIES.

(A) Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this Ordinance shall be guilty of a municipal infraction punishable by a civil penalty of five hundred dollars (\$500) for the initial offense and seven hundred fifty dollars (\$750) for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates this Ordinance after having previously been found guilty of violating the same Ordinance provision at the same location or at a different location shall be guilty of a repeat offense. This municipal infraction penalty shall be an alternative to the penalties provided for in Sec. 2A-36 of this Ordinance.

(B) Seeking a civil penalty as authorized in this section does not preclude the City from seeking alternative relief, including an order for abatement for injunctive relief, from the Court in the same action or as a separate action as provided for in Sec. 2A-37 of this Ordinance.

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

FORM APPROVED:

Vicky Long-Hill, Assistant City Attorney