

ORDINANCE NO. 13,738

AN ORDINANCE to amend the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, by adding and enacting a new Subchapter 18 to Chapter 23, Sections 23-248 through 23-263, relating to street use permits.

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, is hereby amended by adding and enacting a new Subchapter 18 to Chapter 23, Sections 23-248 through 23-263, relating to street use permits, as follows:

SUBCHAPTER 18. STREET USE PERMIT

23-248. PURPOSE.

- a. The streets in possession of the City are primarily for the use of the public in the ordinary way. However, under proper and uniform circumstances the City Council may allow special street use, subject to reasonable municipal regulation and control. Therefore, this ordinance is enacted to regulate and control the use of streets pursuant to a Street Use Permit to the end that the health, safety and general welfare of the public and the good order of the City can be protected and maintained.
- b. A Street Use Permit allows for the temporary closure of streets in a commercial and/or residential district. The purpose of a temporary closure of streets can be an event, activity, block party, festival, or events of similar character and nature, over a one (1) to five (5) day period.

23-249. DEFINITIONS.

- a. City means the City of Des Moines, in the county of Polk, in the state of Iowa.
- b. Person means any natural person, his or her heirs, executors, administrators or assigns, firm, partnership, association, corporation, company or organization, its or their successors or assigns, or the agent of any of them.
- c. Street means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right for purposes of vehicular traffic.
- d. Residential event means a neighborhood-centered activity on a non-primary street in an area that is not zoned commercial or industrial.
- e. Entertainment District means a specifically identified area or zone of the city, other than residential, which is composed of a group or organization of businesses such as restaurants and bars.
- f. Farmer's or Public Market means the sale of products, the majority of which have been produced in the State of Iowa, including but not limited to, raw fresh vegetables, fruit, honey, herbs, flowers, plants, nuts, baked goods or handcrafted

items which conform to all applicable city, county or state health and safety provisions, particularly Iowa Department of Agriculture Regulations, and which are offered for sale by any person, persons, business, or organization on a portion of, or entirely on a public street, sidewalk, alley, park or public place during set hours, no more than two days per week within a one year period.

- g. Parade or Procession means the use of streets or other public right-of-ways in the City for any organized march or display along a designated route.

h. Timed Event means any event, activity, competition or race, not including the use of motorized vehicles, involving three or more people for which the successful completion relies upon a participant's time or order of finish which obstructs the free flow of pedestrian or vehicular traffic on the streets, sidewalks, alleys or public places of the City.

- h. Athletic Event means any event or activity involving three or more people organized by a sponsor or requiring the payment of an entrance or participation fee for the purposes of running, walking, or bicycling and which obstructs the free flow of pedestrian or vehicular traffic on the streets, sidewalks, alleys or other public places of the City.

23-250. PERMIT REQUIRED.

A Street Use Permit is required for the temporary closure of any portion of a street for any event, activity, block party, festival, or events of similar character and nature.

23-251. STREET USE TEAM.

- a. The Street Use Team shall consist of representatives of the City Departments of Engineering (Traffic and Transportation Division), Police, Fire, City Clerk, Public Works, Park and Recreation, Finance (Risk Manager), and Community Development (Building Safety Division). Other City representatives or outside representatives (such as the Capitol Police or MTA) will be added as necessary.
- b. The Street Use Team may require the person or representative of the group applying for a Street Use Permit to be present when the Street Use Team meets regarding the application for a permit. At that time, the applicant may be required to provide any additional information that is reasonably necessary to make a fair determination as to the Team's recommendation to the City Council.

23-252. APPLICATION.

- a. A written application for a Street Use Permit by persons or groups desiring the same shall be made on a form provided by the City Clerk and shall be filed with the City Clerk. The application shall set forth the following information regarding the proposed street use:
 - 1. The name, address, and telephone number of the applicant or applicants.
 - 2. If the proposed street use is to be conducted for, on behalf of, or by an organization, the name, address, and telephone number of the headquarters of the organization and of the

authorizing responsible heads of such organization.

3. The name, address, and telephone number of the person or persons who will be responsible for conducting the proposed use of the street.
4. The date and duration of time for which the requested use of the street is proposed to occur.
5. An accurate description of that portion of the street proposed to be used, including a map.
6. The number of persons for whom use of the proposed street area is requested.
7. The proposed use, described in detail, including a description of the activities planned during the street use such as vending, music, selling of alcoholic beverages, for which the Street Use Permit is requested.
8. A list of any additional permits that will be required for the requested street use.
9. A designation of any public facilities or equipment to be utilized.
10. After initial filing of the application, any additional information that the Street Use Team deems reasonably necessary to a fair determination as to whether a permit should be issued, including but not limited to a crowd control plan.

a. Deadline for Applications.

1. Applications in a Commercial or Residential District must be submitted not less than thirty (30) calendar days prior to the date of the event.

a. Petition Required.

1. The application shall be accompanied by a petition designating the proposed areas of the street to be used and the time of the proposed use. The petition shall be signed by not less than seventy-five percent (75%) of the commercial business owners, or residents over eighteen (18) years of age, abutting the street to be closed.
2. The petition form shall be available from the City Clerk and when completed the petition shall be verified by the Street Use Team.
3. The applicant shall provide at least 48-hour written notice of the event to all residents

and commercial tenants, owners, and lessees and provide a copy to the City Clerk's office.

23-253. APPLICATION PROCESS.

- a. Upon receipt of a completed Street Use Permit Application, the non-refundable application fee, petition, and any accompanying materials, the City Clerk shall immediately forward copies of the application to the Street Use Team.
- b. The Team shall evaluate the application and materials using the standards found elsewhere in this ordinance, other City of Des Moines ordinances, and the Events Criteria and Street Use Policy adopted by the City Council. The Team shall recommend to the City Council either approval, with conditions as necessary to ensure the safety of the public and provide for an orderly event, or denial of the application. Upon City Council approval, the City Clerk shall issue the permit, including any special provisions or conditions.
- c. The recommendation of approval or denial of a completed application by the Team shall be made within fourteen (14) calendar days of receipt of all materials. The applicant will be so notified as soon as reasonably practicable thereafter.

23-254. RELATED LICENSES AND PERMITS.

- a. Alcoholic Beverages Permit-If the applicant requests permission to sell alcoholic beverages on a public street, the applicant shall follow the procedure set forth in this ordinance, the liquor liability requirements of the City of Des Moines Risk Management Special Events Policy, and procedures set forth in the Municipal Code of the City of Des Moines, Chapter 5, Iowa Code Chapters 22 and 123 (see also 185 Iowa Administrative Code, Chapter 18).
- b. Entertainment District License-If the applicant requests permission for the use of a street as an Entertainment District, the applicant shall follow the procedure set forth in this ordinance and the procedure set forth in the Municipal Code of the City of Des Moines, Section 23-19.01 to 23-19.08.
- c. Farmer's or Public Market Permit-If the applicant requests permission for the use of a street as a Farmer's or Public Market, the applicant shall follow the procedure set forth in this ordinance and the procedure set forth in the Municipal Code of the City of Des Moines, Section 23-20.08 to 23-20.16.
- d. Fireworks Permit-If the applicant wishes to publicly display fireworks using the City streets, the applicant shall follow the procedure set forth in this ordinance and the procedure set forth in the Municipal Code of the City of Des Moines, Section 11-18.
- e. Parade and Procession Permit-If the applicant wishes to hold a parade or procession on a public street, the applicant shall follow the procedure set forth in this ordinance and the procedure set forth in the Municipal Code of the City of Des Moines, Sections 23-9 to 23-11 and 27-2.
- f. Sound Amplification-If the applicant requests the use of sound amplification equipment, the applicant shall follow the procedure set forth in the Municipal Code of the City of Des Moines, Section 16-144.
- g. Timed/Athletic Event-If the applicant requests the use of streets, sidewalks, or other public places for a timed or athletic event, the applicant shall follow the procedure set forth in this ordinance and the procedure set forth in the Municipal Code of the City of Des Moines, Section 6-85 to 6-94.

23-255. FIRE APPARATUS ACCESS ROAD.

Fire apparatus access roads shall be provided as required in the *Uniform Fire Code*, unobstructed access width of not less than 20 feet and unobstructed vertical clearance of not less than 13 feet 6 inches.

23-256. STANDARDS FOR ISSUANCE.

To the extent that they are consistent with the provisions of any other section of the City of Des Moines Municipal Code and the standards established within this subchapter, the City Council's policy on Street Use Permits shall govern the issuance of Street Use Permits.

23-257. CRITERIA IN REVIEWING STREET USE PERMIT APPLICATIONS.

The criteria to be considered in reviewing Street Use Permit applications may include:

- a. Whether the time and size of the event would substantially interrupt the safe and orderly movement of pedestrian and vehicular traffic in the vicinity of the event's location; or
- b. Whether the concentration of persons at the event would unduly interfere with proper fire and police protection of, or other emergency service through, the event or to areas adjacent to the event's location; or
- c. Whether the estimated number of participants or the size or type of event equipment is sufficient to close a street or if there is an alternative available to closing a street; or
- d. Whether another Street Use Permit has already been granted for substantially the same time and location; or
- e. Whether the size or time of the event would require so great a diversion of the City of Des Moines Police Department as to prevent normal police protection of the City or to prevent adequate police protection at another previously scheduled City-wide event; or
- f. Whether the event is reasonably likely to cause injury to persons or property and there is adequate planning for crowd control or participants; or
- g. Whether adequate sanitation or other health facilities will be available at the event; or
- h. Whether there is a sufficient number of parking places within a reasonable distance to accommodate the number of vehicles expected; or
- i. Whether the time, size, or nature of the events are compatible with the normal activity at that location; or
- j. Whether the proposed use or event will have a significantly adverse environmental impact; or
- k. Whether negative police or other official reports of past activities sponsored by the same applicant or in the same location merit a recommendation of denial.

23-258. FEES.

a. General Requirement. An applicant who seeks a Street Use Permit shall pay a nonrefundable application fee of \$250.00 at the time of application and within ten (10) days before the event post a refundable \$500.00 cash bond to the City of Des Moines to guarantee payment of the actual cost of city equipment and services.

b.Exceptions to General Requirement. An applicant who seeks a Street Use Permit in conjunction with any of the following licenses and permits, or with a residential event, or is a recognized neighborhood association shall pay the specified fees for the Street Use Permit or no fee as follows:

1.Parades and Procession Permits require no fee for the Street Use Permit.

2.Timed/Athletic Event License require no fee for the Street Use Permit.

3.Farmer's or Public Market Permits require no fee for the Street Use Permit.

4.Entertainment District Licenses require no fee for the Street Use Permit.

5.Residential events require a \$10.00 Street Use Permit fee with no bond.

6.Events sponsored by a recognized neighborhood association require a \$10.00 Street Use Permit fee with no bond.

c.If the permitted use will require more than minimum use of any city equipment or services, the applicant shall pay the actual costs for use of that equipment and those services in accordance with a schedule of rental and service fees approved by the city council.

d.As a condition of approval of an application, the applicant shall agree to pay, within thirty (30) days of billing, any additional actual costs, for the use of city equipment and/or services, incurred by the city by the occasion of the event and its participants.

e.All or a portion of the fees may be waived by the city council if an event is deemed appropriate.

23-259. INSURANCE.

a.The applicant for a Street Use Permit agrees to indemnify, and hold harmless the City, its employees, and agents, and to waive right to subrogation as per the requirements of the City's Risk Management Special Events Policy.

b.The requirements of insurance shall be determined according to the Risk Management Special Events Policy, using objective standards including, but not limited to, the size and nature of the event, the number of expected participants, and the potential for physical injury or property damage caused by participants.

c. As evidence of the applicant's ability to perform the conditions of the permit, the applicant shall furnish a Certificate of Insurance at the time of application to the City Clerk's Office, including the City of Des Moines, its employees, and agents listed as additional insured.

d. When required, commercial liability insurance shall include coverage for contractual liability. The policy limits will be determined by the risk management special events policy.

e. The certificate of insurance shall provide a thirty (30) day written notice to the city upon cancellation, non-renewal, or material change in the policy and ten (10) days for nonpayment of premium.

23-260. DENIAL PROCEDURE.

a. Upon recommendation of the Street Use Team for denial of a Street Use Permit, the applicant and the Street Use Team may be represented by counsel and shall have the opportunity to present evidence at the City Council meeting.

b. The decision of the City Council shall be a final determination and shall be subject to review in District Court of Polk County as may be provided by law. Any party aggrieved by the decision may seek review thereof but in no event later than thirty (30) days after the date of the final determination.

23-261. TERMINATION OF A STREET USE PERMIT.

A Street Use Permit for any event in progress may be terminated by the Chief of Police, or designee, if the safety of the public is imminently endangered by activities generated during the event; the participants engage in violent or destructive behavior causing injury to persons or damage to property; or if there is a major violation of the conditions of the permit such that the standards of issuance are no longer met. A Street Use Permit for an event in progress may be terminated by the Chief of Police, or designee, if termination is a reasonable and necessary response in the face of imminent danger or threat to public safety.

23-262. VIOLATIONS.

No person shall:

a. Hold, sponsor or be in charge of any activity for which a street use permit is required without possessing a valid street use permit; or

b. Violate any condition placed upon a street use permit; or

c. Provide false or inaccurate information on a written application for a street use permit; or

d. Knowingly participate in an activity for which a street use permit is required without a valid street use permit having been granted; or after a permit has been terminated pursuant to subsection 23-261, above; or

e. Disobey or encourage others to disobey this section after a police officer has informed him or her of any provisions of this section or the terms of the street use permit that he or she is violating; or

f. Violate any other subsection of this ordinance.

23-263. 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 for the initial offense and \$750 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.

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

FORM APPROVED:

Douglas P. Philip, Assistant City Attorney

Christopher J.
Coleman, Mayor Pro
Tem

Attest:

I, Diane Rauh, Chief Deputy City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 99-2411), passed by the City Council of said City at a meeting held August 2, 1999, signed by the Mayor Pro Tem August 2, 1999, and published as provided by law in the Business Record on August 16, 1999. Authorized by Publication Order No. 6218.

Diane Rauh, Chief
Deputy City Clerk

