

ORDINANCE NO. 13,943

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, by repealing Sections 102-123, 102-124, 102-125, 102-126, 102-127, 102-128, 102-130, 102-131, 102-132, 102-133 and 102-134 thereof and enacting new Sections 102-123, 102-124, 102-125, 102-126, 102-127, 102-128, 102-130, 102-131, 102-132, 102-133 and 102-134, relating to snow and ice removal.

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, is hereby amended by repealing Sections 102-123, 102-124, 102-125, 102-126, 102-127, 102-128, 102-130, 102-131, 102-132, 102-133 and 102-134 thereof and enacting new Sections 102-123, 102-124, 102-125, 102-126, 102-127, 102-128, 102-130, 102-131, 102-132, 102-133 and 102-134, relating to snow and ice removal, as follows:

Sec. 102-123. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Hearing Officer means the city manager or designated representative.

Person means and includes an individual or group or association of individuals; a firm or any member thereof; a corporation or any executive officer, manager, person in charge or employee thereof; and the use of a pronoun specifying one gender shall include both genders.

Owner means the record title holder or the contract purchaser, if any. Where the city holds title to real estate, which by operation of state law is under the charge and supervision or management and control of an independent board, utility, or enterprise, such board, utility or enterprises shall be considered the owner of the real estate.

Snow season means the period beginning October 15 and ending April 15.

Sec. 102-124. Obligation of owner or person in possession of real estate.

(a) The owner of any real estate abutting a public sidewalk shall remove snow, ice and accumulations from sidewalks within a reasonable time but in no case more than 48 hours following the cessation of the weather event by which it was deposited; provided, however, that in extraordinary weather circumstances the director of public works or his or her designated representative may extend the period of time for removal under this section. In those extraordinary weather situations the director of public works or his or her designated representative will deliver to representative news media a statement indicating the amount of additional time the owners or those in possession of the real estate shall have to remove snow, ice and accumulations from sidewalks.

(b) In any proceedings charging a violation of this article, proof that the particular violation described constitutes a violation of this article, together with proof that the particular violator was the owner, agent, tenant, or lessee of the residential dwelling, commercial establishment and/or real estate upon which the violation occurred, shall be deemed to create a rebuttal presumption that such violator was the party violating this article.

(c) The owners or contract buyers, agents, tenants and/or lessees of all residential dwellings, commercial establishments and/or real estate upon which a violation of this article is found shall be jointly and severally

responsible for compliance with this article and jointly and severally liable for any fines or damages awarded under this article.

(d) If snow, ice or accumulations are not removed as required in subsection (a) of this section, including in any extraordinary weather circumstances, within the time designated, the director of public works or his or her designated representative or any police officer is authorized to issue a civil citation, pursuant to I.C. § 364.22(4), and/or a notice of administrative assessment for civil penalty indicating the owner or person in possession of the real estate is in violation of this section and is subject to the penalties provided for in section 102-127 of this division.

Sec. 102-125. Treatment of unremovable ice.

(a) When ice has formed upon any sidewalk so that it cannot be reasonably removed, the owner or person in possession of the abutting real estate shall within a reasonable time keep such ice sprinkled with fine cinders, sand or deicing chemicals in such manner as to provide traction and prevent the sidewalk from being dangerous to persons using the sidewalk. Nothing in this section shall be construed to be a substitute for the removal of ice and accumulations, as required in section 102-124 of this division. This section shall only apply when ice cannot be reasonably removed; however, all accumulations of ice shall be removed as soon as practical.

(b) The director of public works or his or her designated representative or any police officer is authorized to issue a civil citation pursuant to I.C. § 364.22(4) and/or a notice of administrative assessment for civil penalty indicating the owner or person in possession of the real estate is in violation of this section and is subject to the penalties provided for in section 102-127 of this division.

Sec. 102-126. Deposit on public property.

(a) No person shall remove or cause to be removed snow, ice and accumulations from a private premises and deposit the snow, ice and accumulations or cause the snow, ice and accumulations to be deposited upon any public right-of-way, street, avenue, alley, public square or common within the city.

(b) The director of public works or his or her designated representative or any police officer is authorized to issue a civil citation pursuant to I.C. § 364.22(4) to anyone violating this section indicating such person is in violation of this section and is subject to the penalties provided for in section 102-127 of this division.

Sec. 102-127. Penalties.

(a) Any person who fails to remove snow, ice and accumulations from sidewalks as required by this division shall be subject to administrative assessment for civil penalty against the real estate abutting the location of the violation as set forth herein in an amount not

to exceed the penalties provided by section 1-15 of this code.

(b) Any person who fails to perform an act required by this division or who commits an act prohibited by this division shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.

Sec. 102-128. Alternative relief.

A proceeding with a municipal infraction for civil penalty, an administrative assessment for civil penalty and/or with the administrative hearing process for the costs of abatement as authorized by this article 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.

Sec. 102-130. Right to assess costs of removal by city.

When the city removes snow and ice accumulations under section 102-129 of this division, the city may assess the actual cost of removing such snow from the real estate abutting the sidewalk found to be in violation pursuant to sections 102-129 through 102-136 of this division, in addition to taking any other action provided for in this division.

Sec. 102-131. Assessment of costs of removal by city.

The actual cost of removing snow or ice accumulations from the sidewalks shall be paid by the owner of the real estate abutting the sidewalk and shall be assessed against such real estate.

Sec. 102-132. Notice of right to hearing regarding assessments.

(a) In the event the city abated the nuisance by causing the accumulation of snow and ice to be removed, a notice shall be given of the right to a hearing regarding costs of the removal. The notice shall contain the following information:

(1) A description to the extent possible, of the conditions which constituted the nuisance;

(2) A description of the location of the nuisance;

(3) An indication of the date and time that the city entered onto said real estate and caused the conditions

which constituted the nuisance to be abated, or removed, and that the costs of the abatement or removal will be assessed against the real estate abutting the sidewalk from which the abatement occurred, for collection in the same manner as a property tax, or to be collected as a

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(b) In the event that accumulation of snow and ice has not been removed, the City may issue an administrative fine and a notice shall be given of the right to a hearing regarding the assessment of the fine. The notice shall contain the following information:

(1) A description to the extent possible, of the conditions which constituted the nuisance;

(2) A description of the location of the nuisance;

(3) An indication of the date and time

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person notified, or the person's duly authorized agent, may file a written request for hearing as set forth in this article; and

(5) That failure to make a written request for a hearing within ten days of receipt of the notice shall be considered a waiver of the right to a hearing and it

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(c) Service of the notice provided for in subsection (a) and subsection (b) hereof shall be by regular mail, addressed to the owner of the real estate and/or the person deemed to be responsible for the real estate abutting the sidewalk upon which the violation was located.

Sec. 102-133.Administrative hearing.

(a) Any person in receipt of a notice of right to hearing regarding assessment for removal of snow and ice by the city or for right to contest an administrative fine may have, upon request, an appeal hearing with a hearing officer to determine if the assessment shall be placed against the subject real estate.

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

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

(d) The hearing shall be scheduled to be held as soon as practicable and no later than 14 days after the request for hearing was filed with the city clerk. The person requesting the hearing shall be notified in writing or by telephone of the date and place of such hearing at least three 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.

(e) The hearing officer may find that the violation existed and that the city caused the removal of the snow and ice in accordance with this article, or may find that the violation did not exist on the subject real estate, or may uphold the assessment for costs of abatement, or may uphold or reduce or waive the costs of the assessment.

(f) The hearing officer may find that the violation existed, or find that the violation did not exist, may uphold the administrative fine and order it assessed against the subject real estate, or may reduce the fine and order it assessed against the subject real estate or may waive the costs of the assessment.

(g) If the hearing officer finds that a nuisance exists or existed, an order may be entered requiring payment to the city (1) for damages sustained on account thereof, for costs of abatement and for a civil penalty of not more than \$500.00 for the initial offense; (2) for damages sustained on account thereof, for costs of abatement and for a civil penalty of not more than \$750.00 for each repeat offense; or (3) for any other fine authorized under the Iowa Code for damages sustained on account thereof and the costs of abatement.

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

(i) Failure to request a hearing within ten 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 existed and the costs will be collected as set out in the notice.

Sec. 102-134.Repealed by Ord. No. 13,---

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

FORM APPROVED:

Emily Gould Chafa, Assistant City Attorney

Preston Daniels, Mayor

Attest:

I, Donna Boetel-Baker, 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. 01-1379), passed by the City Council of said City at a meeting held May 7, 2001, signed by the Mayor on May 7, 2001, and published as provided by law in the Business Record on May 21, 2001. Authorized by Publication Order No. 1740.

Donna Boetel-Baker, MMC, City Clerk