

ORDINANCE NO. 14,095

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 Sections 102-406, 102-410, 102-411, 102-412, 102-413, 102-414, 102-415, 102-416, 102-417, 102-418, 102-419, 102-420, 102-422, 102-423, 102-424, 102-425, 102-426, 102-427, 102-428, 102-429 and 102-618 thereof and enacting new Sections 102-406, 102-410, 102-411, 102-412, 102-413, 102-414, 102-415, 102-416, 102-417, 102-418, 102-419, 102-420, 102-422, 102-423, 102-424, 102-425, 102-426, 102-427, 102-428, 102-429 and 102-618, all relating to the fees and allowed location and design for bus benches.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. The Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, be and is hereby amended by repealing Sections 102-406, 102-410, 102-411, 102-412, 102-413, 102-414, 102-415, 102-416, 102-417, 102-418, 102-419, 102-420, 102-422, 102-423, 102-424, 102-425, 102-426, 102-427, 102-428, 102-429 and 102-618 thereof and enacting new Sections 102-406, 102-410, 102-411, 102-412, 102-413, 102-414, 102-415, 102-416, 102-417, 102-418, 102-419, 102-420, 102-422, 102-423, 102-424, 102-425, 102-426, 102-427, 102-428, 102-429 and 102-618, all relating to the fees and allowed location and design for bus benches, as follows:

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. 102-410. 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 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 to engage in the business of maintaining benches in accordance with this article, the city treasurer shall collect a license fee in the sum of \$300.00 per year, payable in advance, in lieu of all other license fees. Upon the approval by the city council of an application to place any bench in accordance with this article, 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 new 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 stop is located and shall be placed parallel to the curb to the greatest degree practical.

(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 location ceases to be a posted bus stop 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, design 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.

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. 102-422. 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 shall conform to the following requirements:

(a) 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.

(b) The bench shall be of heavy construction, weighing not less than four hundred (400) pounds.

(c) The end pieces and legs of the bench shall be constructed of concrete or solid metal.

(d) The seat and backrest of the bench shall be constructed of hardwood or plywood with a minimum thickness of three-fourths-inch for the backrest and one and one-half inches for the seat, or other material satisfactory to and approved by the city engineer.

(e) The several parts of the bench shall be joined by stainless steel screws and countersunk bolts of three-eighths-inch or greater diameter, or other durable fasteners approved by the city engineer.

(f) No nails or wire may be used for temporary or permanent repair of the several parts of the benches.

(g) 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.

(h) 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.

(i) Any currently permitted bench that does not comply with the requirements of this section shall be made to comply, or shall be replaced by a bench that does comply, by December 31, 2003.

Sec. 102-423. Maintenance of bench and surrounding area.

(a) All surfaces of all benches shall be kept free of splinters, sharp edges or protrusions and shall be maintained in a smooth and well-painted condition at all times.

(b) The licensee shall remove accumulated snow 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 forty-eight (48) hours of the end of the snowfall.

(c) If the area immediately in front of the bench is not paved and becomes worn and muddy, upon notification by the city engineer the licensee shall cause paving bricks, paving block, concrete, or other durable material approved by the city engineer, to be placed in the worn area within thirty (30) days of such notification.

(d) Upon written notification from the Metropolitan Transit Authority that a bus bench location is regularly used by a person or persons in a wheelchair, the city engineer shall send a written notification to the licensee directing the licensee to make the area between the bus bench and the bus loading area wheelchair accessible. Within thirty (30) days of such notification, the licensee shall cause the area between the bus bench and the bus loading area to be paved with durable material and wheelchair accessible in a manner approved by the city engineer.

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. The word "obscene" shall have the meaning set out in chapter 70 of this Code. No beer or alcoholic beverages or nightclubs or taverns 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 to remove the bench within thirty (30) days. If the licensee 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 permit 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 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) 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 of licensee to remove.

Upon the failure of the licensee 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 the cost of removal and storage. Upon the failure of the licensee 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. 102-428.

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. 102-618. 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, an annual fee of \$0.50 per square foot for all

such space used or occupied, except as provided in subsections 102-610(b) and (c) and sections 102-620 and 102-623 of this article. The minimum fee for the encroachments covered by this section shall be as follows:

(1) For trash containers, \$15.00.

(2) For public benches with advertising, \$25.00 effective April 1, 2002; \$50.00 effective April 1, 2003; \$75.00 effective April 1, 2004; and \$100.00 effective April 1, 2005.

(3) For all other encroachments, \$10.00.

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

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

Preston A. Daniels, Mayor

Attest:

I, Donna V. 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. 02-1418), passed by the City Council of said City at a meeting held June 3, 2002 signed by the Mayor on June 3, 2002 and published as provided by law in the Business Record on June 17, 2002 Authorized by Publication Order No. 3281.

Donna V. Boetel-Baker, City Clerk