

ORDINANCE NO. 14,386

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, and amended by Ordinance No. 13,943, passed May 7, 2001, and Ordinance No. 14,164, passed December 16, 2002, by amending Sections 102-121, 102-124, 102-125, 102-126, 102-127, 102-128, 102-129, 102-130, 102-131, 102-132, 102-133 and 102-136 thereof and adding and enacting new Sections 102-126.05 and 102-126.07, 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, and amended by Ordinance No. 13,943, passed May 7, 2001, and Ordinance No. 14,164, passed December 16, 2002 is hereby amended by amending Sections 102-121, 102-124, 102-125, 102-126, 102-127, 102-128, 102-129, 102-130, 102-131, 102-132, 102-133 and 102-136 thereof and adding and enacting new Sections 102-126.05 and 102-126.07, relating to snow and ice removal, as follows:

**Sec. 102-121. Intent of division.**

It is the intent of this division to provide for certain procedures relative to removal of snow and ice from sidewalks and private property and for certain penalties for failure to comply with this division.

**Sec. 102-124. Obligation of owner or person in possession of real estate to remove snow or ice from a public sidewalk.**

- (a) The owner or tenant or lessee of any real estate abutting a public sidewalk shall remove snow and ice from the sidewalk within a reasonable time but in no case more than 48 hours

following the cessation of the weather event by which such snow or ice was deposited; provided, however, that in extraordinary weather circumstances the director of public works or his or her designated representative may provide additional time for removal under this section. (b) In any proceedings charging a violation of this section, proof that the particular violation described constitutes a violation of this section, 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 section.

- (c) The owners or tenants or lessees of the abutting real estate upon which a violation of this division is found shall be jointly and severally responsible for compliance with this division and jointly and severally liable for any fines or administrative penalties or assessments imposed under this division.
- (d) The owner or tenants or lessee of any real estate abutting a multi-use recreational trail which also serves as a public sidewalk bordering a public street shall only be required to remove snow or ice for a width of four (4) feet upon such public sidewalk.
- (e) When ice has formed upon any public sidewalk so that it cannot be reasonably removed, the owner or tenant or lessee of the abutting real estate shall within forty-eight (48) hours following the cessation of the weather event by which such ice was deposited, keep such ice sprinkled with 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, as required in subsection (a) of this section. This subsection shall only apply when ice cannot be reasonably removed; however, all accumulations of ice shall be removed as soon as practical.

**Sec. 102-125. Repealed by Ord. No. 14,---**

**Sec. 102-126. Deposit on public property.**

- (a) No person shall remove or cause to be removed snow or ice from private property and deposit such snow or ice or cause the snow or ice to be deposited upon any public right-of-way, street, avenue, alley, public square or other city property within the city.
- (b) No person shall remove or cause to be removed snow or ice from a public sidewalk or from a driveway approach in the public right-of-way and deposit or cause to be deposited

such snow or ice upon the traveled portion of any public right-of-way, street, avenue, alley, public square or other city property within the city.

- (c) Nothing in this section shall prohibit the removal of snow or ice from a public sidewalk or from a driveway approach in the public right-of-way, and the deposit of such snow or ice on the public border area abutting such sidewalk or driveway.
- (d) In any proceedings charging a violation of this section, proof that the particular violation described constitutes a violation of this section, together with proof that the violator was the owner, agent, tenant or lessee of the residential dwelling, commercial establishment and/or real estate from which the snow or ice was removed, shall be deemed to create a rebuttable presumption that such violator was the party violating this section.

**Sec. 102-126.05. Administrative penalties - notice of violations.**

- (a) The director of public works or his or her designated representative or any police officer is authorized to impose an administrative penalty upon any owner or tenant or lessee of any real estate who fails to remove snow or ice from the abutting sidewalks or multi-use trails as required by this division or upon any person who removes or deposits, or causes to be removed and deposited snow or ice in violation of this division. The administrative penalty for such violations shall be as provided in the schedule of administrative penalties adopted by the city council by resolution.
- (b) Penalties shall be paid in full within thirty (30) days of the issuance of the notice.
- (c) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to the violator by the director of public works or his or her designated representative 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. 102-126.07. Administrative hearing.**

- (a) A person to whom a notice of administrative penalty has been issued may request an administrative hearing for review of the finding that a violation occurred.
- (b) A request for hearing on a notice of administrative penalty shall be made in writing and filed with the city clerk within ten (10) days of the date of issuance of the notice. Such request shall include the address of the violator and state the basis for the appeal.
- (c) 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 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.
- (d) The hearing officer shall determine whether or not the violation occurred.
- (e) The determination of the hearing officer is a final administrative decision.
- (e) Failure to request a hearing within ten days of the date of issuance of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the violator is responsible for the violation.

**Sec. 102-127. Municipal infractions.**

- (a) Any person who fails to perform an act required by this division or who commits an act prohibited by this division shall be deemed to have committed a municipal infraction. The first offense within the snow season shall be deemed the first offense punishable by a civil penalty not to exceed \$250.00. The second and each subsequent offense within a snow season shall be a repeat offense, punishable by a civil penalty not to exceed \$500.00.
- (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 division indicating such person is in violation of this division and is subject to the penalties provided for in section 102-127 of this division.

**Sec. 102-128. Right of city to seek alternative relief.**

The city is not precluded from seeking alternative relief from the court, including an order for abatement or injunctive relief, in the event that the city issues a notice of violation and/or files a municipal infraction for the same violation of this division.

**Sec. 102-129. Removal by city of snow or ice.**

- (a) Whenever snow or ice shall have remained on any sidewalk in violation of section 102-124 of this division, the city may cause such snow or ice to be removed, after providing the owner of the abutting real property with notice of the need to remove such snow or ice and that if not removed the city will cause such removal and will assess the costs for such removal. Service of the notice shall be by posting at the property, or by regular or certified mail, addressed to the owner of the abutting real estate. The notice shall provide at least twenty-four (24) hours to remove the snow or ice prior to the city's removal. Provided, however, that the city may cause such removal without prior notice in the event that an emergency is declared by the director of public works or his or her designated representative.
- (b) Whenever snow or ice shall be removed from private property and deposited upon any public right-of-way, street, avenue, alley, public square or other city property in violation of section 102-126 of this division, the city may cause such snow or ice to be removed, after providing the person who removed and deposited or caused to be deposited such snow or ice with notice of the need to remove such snow or ice and that if not removed the city will cause such removal and will assess the costs for such removal. Service of the notice shall be by posting at the property, or by regular or certified mail, addressed to the owner of the abutting real estate. The notice shall provide at least twenty-four (24) hours to remove the snow or ice prior to the city's removal. Provided, however, that the city may cause such removal without prior notice in the event that an emergency is declared by the director of public works or his or her designated representative.

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

- (a) When the city removes snow or ice 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 of section 102-124 of this division pursuant to sections 102-129 through 102-136 of this division, in addition to taking any other action provided for in this division.

- (b) When the city removes snow or ice under section 102-129 of this division, the city may assess the actual cost of removing such snow from the real estate of the person who removed and deposited or caused to be deposited such snow or ice found to be in violation of section 102-126 of this division 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.**

- (a) The actual cost of removing snow or ice from the sidewalks in violation of section 102-124 of this division shall be paid by the owner of the real estate abutting the sidewalk and shall be assessed against such real estate.
- (b) The actual cost of removing snow or ice from the sidewalks in violation of section 102-126 of this division shall be paid by the person who removed and deposited or caused to be deposited such snow or ice the real estate abutting the sidewalk and shall be assessed against the real estate owned by such person.

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

- (a) When the city removes snow or ice pursuant to section 102-129, 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 violation of section 102-124 or 102-126;
  - (2) A description of the location where snow or ice was removed;
  - (3) An indication of the date and time that the city caused the removal, and that the costs of the removal will be assessed against the real estate abutting the sidewalk from which the removal occurred, or against the real estate owned by the person removing or depositing such snow or ice or causing such deposit, for collection in the same manner as a property tax, or to be collected as a personal judgment;
  - (4) An itemization of the costs incurred by the city in the removal of the snow or ice;
  - (5) That the person notified, or the person's duly authorized agent, may file a written request for hearing as set forth in this division; and
  - (6) 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 will be thereafter conclusively presumed that the violation

and removal occurred and costs will be assessed against the abutting real estate without further notice.

- (b) Service of the notice provided for in subsection (a) hereof shall be by regular mail, addressed to the owner of the real estate abutting the sidewalk upon which the violation occurred for violations under sections 102-124 or 102-126.

**Sec. 102-133. Administrative hearing for assessment of costs for removal of snow or ice.**

- (a) Any person in receipt of a notice of right to hearing regarding assessment for removal of snow or ice by the city 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 or ice in accordance with this division, 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, as appropriate.
- (f) The determination of the hearing officer is a final administrative decision.

**Sec. 102-136. Allocation of cost.**

The cost of removing snow or ice from sidewalks, any public right-of-way, street, avenue, alley, public square or other city property shall be paid from the proper fund and when collected shall be credited to that fund.

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

FORM APPROVED:

Ann DiDonato, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, 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. 04-2413), passed by the City Council of said City at a meeting held November 8, 2004 signed by the Mayor on November 8, 2004, and published as provided by law in the Business Record on November 22, 2004 Authorized by Publication Order No.4395.

Diane Rauh, City Clerk