

ORDINANCE NO. 16,381

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, is hereby amended by amending Sections 102-8, 102-615 and 3-23, relating to abandoned property and the removal of encroachments.

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, as heretofore amended, is hereby amended, by amending Sections 102-8, 102-615 and 3-23, as follows:

Sec. 102-8. Disposition of abandoned property.

If any abandoned property as referred to in sections 102-5, 102-6 and 102-7 of this article has been or is kept for 30 days or more without being claimed, it may be disposed of by the city manager or his or her authorized representative. If the city manager elects to sell the property, it may be sold ten days after notice of the proposed sale has been given by one publication in any newspaper published in the city. The city may be a bidder at the sale. If at any such sale an amount is bid in excess of the charges or lien of the city, the excess shall be used at the discretion of the city manager.

Sec. 102-615. Removal.

- (a) License. Whenever the city engineer has revoked a license required under this article or the license has expired, the owner or user of the subject encroachment shall cause it to be removed immediately from the public property.
- (b) Three Day Notice. Whenever a department finds any encroachment constructed, used or maintained without the required license having been secured or maintained in effect, the director of that department may, as an alternative to any other remedy allowed by this Code, order the removal of the encroachment by giving written notice of such order by certified mail to the address of the owner or user of the encroachment, if known, or, if such address is not known, he or she may post such notice on or next to the encroachment. The notice shall state the name, address and telephone number of the department director; the location and a description of the encroachment; that the encroachment is in violation of the requirements of this article; that the owner or user is ordered to cause immediate removal of the encroachment from the public property; that the encroachment may be removed and stored, as applicable, by the city for a period of time in accordance with city policy, but not less than 30 days after the date of removal designated in the notice, which date of removal shall be no less than three days after the date the notice was mailed or first posted, as the case may be. If such notice is given and the encroachment is still on public property after the date specified in the notice, the department director may cause removal and storage, as applicable, of the encroachment for a period of time no less than 30 days in accordance with city policy.

- (c) **Removal Without Notice.** As an alternative to any other remedy allowed by this Code and notwithstanding any other section of this article, a department director may cause immediate removal and storage, as applicable, for a period of time no less than 30 days from the date of removal in accordance with city policy, of any encroachment on public property where its construction, use or maintenance unreasonably endangers the safety of persons or property or unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic. Any person aggrieved by the removal of an encroachment pursuant to this section may appeal the city's decision to remove and store the encroachment, as applicable, pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within 30 days commencing on the date of the city's removal of the encroachment. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest the city's decision to remove and store, as applicable, the encroachment.
- (d) **Pre-Removal Hearing.** Following the service of a notice under subsection (b) above, the owner or user of the encroachment may appeal the city's decision to remove the encroachment pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within 3 days from the date of the notice to remove. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest the city's decision to remove the encroachment. The administrative hearing officer's authority in a pre-removal appeal hearing shall be limited to a review of the city decision to remove the encroachment from its present location.
- (e) **Post-Removal Hearing.** The owner or user of the encroachment may appeal the city's decision under subsection (b) or (c) to retain and store the property or for property damage, loss, or disposal, of the encroachment pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within 30 days commencing on the date of the city's removal of the encroachment. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest to appeal such decision. The administrative hearing officer's authority on appeal shall be limited to ordering personal property that is stored by the city to be provided to the appellant.

Sec. 3-23. Limitations on hearings.

The hearing on an appeal from a decision made by a city official pursuant to the Code sections listed below shall be subject to the following restrictions and limitations:

- (1) *Section 114-485.15. Impoundment of a vehicle.*

The sole issue before the administrative hearing officer shall be whether there was probable cause as defined in section 114-485.17 to impound the vehicle and personal property contained within the vehicle in question. The department causing the vehicle to be impounded shall carry the burden of establishing that there was probable cause to impound the vehicle in question. The administrative hearing officer shall decide only that either (i) there was probable cause to impound the vehicle and contents, or (ii) there was no probable cause to impound the vehicle and contents.

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

FORM APPROVED: Lisa A. Wieland, Assistant City Attorney

Connie Boesen, Mayor

Attest: I, Laura Baumgartner, 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. 24-1277), passed by the City Council of said City at the meeting held on September 16, 2024 and signed by the Mayor on September 16, 2024 and published and provided by law in the Business Record on October 4, 2024. Authorized by Publication Order No. 12758.

Laura Baumgartner, City Clerk