

★ Roll Call Number

Agenda Item Number

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Date May 24, 2010

An Ordinance entitled, "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. 14,095 passed June 3, 2002, and by Ordinance No. 14,174 passed December 16, 2002, by amending Sections 102-410, 102-415, 102-416, 102-422, 102-423, 102-424, 102-425, 102-426, 102-427 and 102-430, relating to fees, locations, design and maintenance for bus benches",

which was considered and voted upon for the first time under Roll Call No. 10-630 of April 26, 2010, and considered and voted upon for the second time under Roll Call No. 10-736 of May 10, 2010, again presented.

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				


CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

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 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date	April 26, 2010
	Agenda Item No. 48 Roll Call No. 10- 630 ⁷³⁶ Communication No. 10-215 Submitted by: Jeb E. Brewer, P.E. City Engineer	

AGENDA HEADING:

Amending Chapter 102 of the Municipal Code regarding Bus Benches.

SYNOPSIS:

Recommend approval of the staff recommendations, including first reading of the Ordinance regarding bus benches.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

At the March 22, 2010 meeting, by Roll Call 10-469, the City Council approved a contract with Creative Outdoor Advertising (COA) to provide a bus bench/street side amenities program on the streets of Des Moines that are served by public transit. The terms of the contract provide for some new features in the construction, installation, and maintenance of the bus benches, and referenced that the City would revise the existing bench ordinance to incorporate the same features as contained in the contract.

Staff has prepared the appropriate revisions to sections of the bench ordinance, and recommends Council approval. The ordinance still provides that some other bench company could apply for a license and permits for bus benches, but would have to comply with the same standards for construction, installation and maintenance as in the COA contract.

The amendments to the ordinance are attached to the roll call.

PREVIOUS COUNCIL ACTION(S):

Date: March 22, 2010

Roll Call No.: 10-469

Action: Contract with Creative Outdoor Advertising of America to provide bus benches on Des Moines streets served by Public Transit, through March 31, 2020, guaranteed annual return of \$20,000. (Council

Communication No. 10-168) Moved by Griess to adopt. Motion Carried 7-0.

Date: October 26, 2009

Roll Call No.: 09-1970

Action: Proposal from Creative Outdoor Advertising (COA) to provide a bus bench/street side amenities program on the streets of Des Moines that are served by public transit. (Council Communication No. 09-755) Moved by Vlassis to adopt; refer to City Manager to bring back a contract for Council approval. Motion Carried 7-0.

Date: June 3, 2002

Roll Call No.: 02-1418

Action: Amending Chapter 102 of the Municipal Code relating to the fees and allowed location and design for bus benches. Moved by Hensley that this ordinance do now pass, #14.095. Motion Carried 7-0.

Date: May 6, 2002

Roll Call No.: 02-1159

Action: Amending Chapter 102 of the Municipal Code relating to the fees and allowed location and design for bus benches. (Council Communication No. 02-242). Moved by Coleman that this ordinance be considered and given first vote for passage, as amended to shorten the time period for compliance of existing benches to December 31, 2003. Motion Carried 5-2. Nays: Cownie and Vlassis.

Date: February 18, 2002

Roll Call No.: 02-509

Action: Approving City Manager's recommendation to defer consideration of proposed changes to the ordinance regarding licensing and placement of bus benches and other encroachments on City property, until the March 18, 2002 Council meeting, and placing a moratorium on new license issue until that time. SPONSOR: Hensley. Moved by Vlassis to receive and file, to direct the Legal Department to prepare the necessary legislation to implement the City Manager's recommendation; and to direct that no new licenses for bus benches be granted until after March 18, 2002, to permit the City Council an opportunity to consider adopting an ordinance implementing the City Manager's recommendations prior to the issuance of further bus bench permits. Questions regarding type of advertising allowed and portion of fees to neighborhoods for beautification referred to City Manager for review and recommendation. Motion Carried 7-0.

Date: January 28, 2002

Roll Call No.: 02-263

Action: Amending Chapter 102 of the Municipal Code regarding increased fees for bus benches and other areaway permits. (Council Communication No. 02-036). Moved by Hensley to refer back to staff for further revisions, incorporating the Council's suggestions. Motion Carried 6-1.

BOARD/COMMISSION ACTION(S):

Date: March 3, 2009

Roll Call No.: N/A

Action: Urban Design Review Board requested that Creative Outdoor Advertising provide a more definitive plan, including potential locations for the proposed benches, and comparisons to other vendors providing these products and services. Motion seconded, with a friendly amendment as follows: Provide additional information regarding maintenance, financial impact and use in neighborhoods with streetscapes/street furniture.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Second and third readings of Ordinance.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.

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ORDINANCE NO. _____

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. 14,095 passed June 3, 2002, and by Ordinance No. 14,174 passed December 16, 2002, by amending Sections 102-410, 102-415, 102-416, 102-422, 102-423, 102-424, 102-425, 102-426, 102-427 and 102-430, relating to fees, locations, design and maintenance for bus benches.

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. 14,095 passed June 3, 2002, and by Ordinance No. 14,174 passed December 16, 2002, is hereby amended by amending Sections 102-410, 102-415, 102-416, 102-422, 102-423, 102-424, 102-425, 102-426, 102-427 and 102-430, relating to fees, locations, design and maintenance for bus benches, as follows:

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 or agreement to engage in the business of maintaining benches and a separate permit for each bench location is obtained from the city council.

Sec. 102-415. License and permit fees.

Upon the approval by the city council of an application for a license to engage in the business of maintaining benches in accordance with this article, the city treasurer shall collect a license fee in the amount set in the schedule of fees adopted by the city council by resolution, 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, unless an annual lump sum payment is due to the City pursuant to an agreement between the City and a third-party bus bench provider, 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.

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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 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 bus stop is located and shall be placed parallel to the curb to the greatest degree practical. If the placement meets all the other conditions, a bench may be placed at an angle facing traffic not to exceed thirty-five (35) degrees from parallel.
 - (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 or a location 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. 102-422. 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, or under a contract, shall conform to the following requirements:

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- (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~~ durable construction, using materials satisfactory to and approved by the city engineer, and shall be firmly mounted on a paved surface in a secure manner that will prevent overturning or other movement of the bench.
- ~~(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; administrative penalties for failure to maintain.

- (a) All surfaces of all benches shall be kept free of splinters, sharp edges or protrusions and shall be ~~maintained~~ kept in a smooth and well-painted maintained condition at all times. The licensee or contractor shall inspect all benches on a regular basis, and shall promptly repair any damage or deterioration.
- (b) The licensee or contractor shall remove accumulated snow and ice 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 a reasonable time but in no case more than 48 hours following posting at <http://www.dmgov.org> that the snow ordinance is no

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longer in effect; provided, however, that in extraordinary weather circumstances the city engineer or the engineer's designee may provide additional time for removal under this section. Such snow or ice shall not be deposited upon the traveled portion of any public right-of-way, street, avenue, alley, public square or other city property within the city, but may be deposited in the public border area between the sidewalk and street.

- (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. The licensee shall keep the bench and the paved surface surrounding the bench free of trash and debris, clean and free of graffiti.
- (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. Failure to comply with subsections (a) through (c) of this section shall subject the licensee or contractor to an administrative penalty as provided in the scheduled administrative penalties adopted by the city council by resolution.
- (e) Penalties shall be paid in full within thirty (30) days of the issuance of the notice.
- (f) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to the violator by the city engineer, the engineer's designee 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.

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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, wine, or alcoholic beverages, or nightclubs, or taverns or adult entertainment businesses as defined in chapter 134 of this code 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 or contractor to remove the bench within thirty (30) days. If the licensee or contractor 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 bench 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 or contractor 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) The paved surface that the bench is mounted on shall be considered part of the bench installation, and removal of the

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bench for any reason shall also require the licensee or contractor to remove the paved surface and to restore the border area to a condition that matches the surrounding border area, unless the city engineer directs that the paved surface should remain.

(ed) 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 or contractor 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 or contractor the cost of removal and storage. Upon the failure of the licensee or contractor 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. 102-430. Notification of claims against licensees or contractor.

The city shall, as promptly as possible, notify the licensee or contractor, under this article, of any claim filed against him or her which is alleged to have arisen from the installation or maintenance of any public bench of the licensee.

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

FORM APPROVED:



Michael F. Kelley
Assistant City Attorney