

★ **Roll Call Number**

Agenda Item Number
36

Date August 25, 2008

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, by amending Section 118-159 thereof, relating to collection procedures, discontinuance of water service and tax lien on charges for wastewater collection and treatment services",

which was considered and voted upon under Roll Call No. 08-1447 of August 11, 2008; again presented.

Moved by _____ that this ordinance be considered and given second vote for passage.

(Second of three required readings)


COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
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

	Council Communication Office of the City Manager	Date	August 11, 2008
		Agenda Item No. 41 Roll Call No. 08-1447 Communication No. 08-483 Submitted by: Jeb E. Brewer, P.E., City Engineer	

AGENDA HEADING:

Amending Chapter 118 of the Municipal Code regarding collection procedures for assessing delinquent sewer rental fees, solid waste charges, and storm water utility fees.

SYNOPSIS:

Recommend approval to amend the Municipal Code of the City of Des Moines, Iowa, relating to the City's process of assessing delinquent sewer rental fees, solid waste charges, and storm water utility fees as a result of changes made by the 2008 Iowa General Assembly under House File 2392, amending Iowa Code Section 384.84, which was effective July 1, 2008.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

During the 2008 legislative session, the Iowa Legislature approved House File 2392, which was signed into law by Governor Chet Culver on April 16, 2008. This law amends Iowa Code Section 384.84, the state statute governing billing and collection procedures for city utilities, by altering the collection practices available to city utilities for account holders who are delinquent in paying water and sewer rental fees, solid waste charges, and storm water utility fees.

Due to these revisions, the City through its agent Des Moines Water Works, will no longer be able to discontinue water service to and/or certify special assessment liens for delinquent sewer rental fees, solid waste charges, and storm water utility fees against a property that has been transferred or sold by a delinquent account holder to a new owner.

Portions of Municipal Code Section 118-159, "Collection procedures; discontinuance of water service; tax lien", should be revised to reflect the changes in collection practices for delinquent accounts as governed by Iowa Code Section 384.84. In terms of process, the code revisions will require the Engineering Department to verify that the serviced property has not been sold or transferred by the delinquent account holder, prior to presenting a special assessment schedule to the City Council for consideration and lien certification to the Polk County Treasurer. If the serviced property has been transferred of record, then the City cannot certify a special assessment against that property as in the past. The Iowa Code change basically states that the delinquent accounts are against the owner of the property

and not the property being served, as previously stated in the code. However, Iowa Code does provide that the City may certify the delinquent special assessment against any property within the State owned by the person with the delinquent accounts. If the property is not in Polk County, the special assessment for the delinquent account must be certified to the county treasurer where the property exists. It may become cost prohibitive to locate these delinquent people and process separate special assessment schedules for individual counties, so some of these delinquent accounts may be sent to collection agencies or written off.

PREVIOUS COUNCIL ACTION(S): NONE

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Second and third readings of the 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.

08-1447
36

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, by amending Section 118-159 thereof, relating to collection procedures, discontinuance of water service and tax lien on charges for wastewater collection and treatment services.

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 amending Section 118-159 thereof, relating to collection procedures, discontinuance of water service and tax lien on charges for wastewater collection and treatment services, as follows:

Sec. 118-159. Collection procedures; discontinuance of water service; tax lien.

- (a) If full payment of all charges billed in a combined service account billing statement is not received within 50 days after the billing date, the city water works is authorized to thereupon discontinue water service to that premises or property owned or rented by the account holder in whose name the delinquent charges were incurred.
- (b) Water service shall not be discontinued at any premises or property owned or rented by the account holder in whose name the delinquent charges were incurred as herein provided unless notice of delinquency has been given to ~~the~~ said delinquent account holder. If the account holder is a tenant, and if the owner or landlord has ~~requested~~ made a written request for notice prior to discontinuance of water service, the Water Works shall also send notice of delinquency to the owner or landlord. Notice of delinquency shall be sent to such persons by ~~first class~~ ordinary mail to their last known addresses as reflected in the computer data base account records of the Water Works or in the county auditor's real estate computer data file. The notice of delinquency shall include the delinquent charge or charges, and shall indicate that if payment of the total amount is not made by a date certain (corresponding to the 50th day after the billing date for that delinquent account), water service to the premises or property

at which the account is delinquent will be discontinued. The notice shall further indicate that if the ~~contributor or customer~~ account holder believes that his or her billing or account balance is in error, the ~~contributor or customer~~ account holder has the right to appeal the notice of delinquency to a Water Works customer service representative, who shall be empowered to hear such appeals, and, after investigating the status of said account with the appropriate city department if necessary, to adjust account balances as the facts of each appeal may warrant.

- (c) The physical disconnection or discontinuance of water service to a particular premises as above provided, or the reconnection of water service, shall be performed by the water works according to its established practices and procedures, and the water works may charge to such account its established fees or charges for disconnection and/or reconnection.
- (d) If full payment of all charges billed in a combined service account billing statement, including late payment charges, is not received within 87 days after the billing date, ~~and it is determined by Water Works that said account is otherwise uncollectible due to the absence or removal of the account holder or other cause,~~ the water works shall send a notice of pending lien to the account holder in whose name the delinquent charges were incurred. ~~If the water works computer data base file for that account indicates that the said delinquent account holder is a tenant, and includes the owner's or landlord's name and address has made a written request for notice to water works,~~ the Water Works shall also send notice of pending lien to the owner or landlord. The notice of pending lien shall be sent, at least thirty days prior to certification of the lien to the county, to such persons by first class ordinary mail to their last known addresses as reflected in the computer data base account records of the water works or in the county auditor's real estate computer data file. The notice of pending lien shall include the delinquent charge or charges, and shall indicate that if payment of the total amount is not made by a date certain (corresponding to the 100th day after the billing date for that delinquent account), the delinquent charge or charges will be certified to the county as a lien against the property or premises owned or rented by the account holder in whose name the delinquent charges were incurred, unless said property is exempt as a residential rental property as described below.
- (e) ~~If, at anytime prior to the 100th day after the billing date for a delinquent tenant combined service account,~~ the owner or landlord of the property or premises involved shall give written notice of tenant liability for a residential rental property to water works as hereafter provided, and shall cause a deposit to be made with water works in an amount not

exceeding the usual cost of 90 days of water, sewer, solid waste collection, and/or stormwater management service to that property or premises, such property or premises shall thereafter be exempt from the imposition of a lien as hereafter provided. Upon receipt, water works shall acknowledge the notice and deposit. The written notice of tenant liability shall contain the name of the tenant responsible for water, sewer, solid waste collection, and/or stormwater management service charges, the address that the tenant occupies or is to occupy, and the date that the tenancy began or is to begin. A change in tenant shall require a new written notice of tenant liability and deposit to be provided to water works by the owner or landlord within thirty business days of the change in tenant. When the tenant moves from the rental property, the water works shall return the deposit if all special charges, service charges, and sales tax have been paid in full, and the lien exemption shall be lifted from the rental property. A change in the ownership of the residential rental property shall require written notice of such change to be given to water works within ten business days of the completion of the change in ownership. The lien exemption for residential rental property does not apply to charges for repairs to a water service if the repair charges become delinquent. The deposit herein provided shall be applied to pay sales tax, special charges, service charges, and late payment charges which are delinquent on and as of the 100th day after the billing date for the delinquent account. Any balance owing on said account after application of the deposit as above provided shall be carried forward and billed on the next billing statement of the account holder in whose name the delinquent rates or charges were incurred, and said property or premises shall not thereafter be exempt from the lien provided in I.C. § 384.84.

- (f) If full payment of all charges billed in a combined service account billing statement, including late payment charges, is not received within 100 days after the billing date, the water works shall prepare an assessment schedule listing such unpaid charges therein. A \$5.00 administrative processing fee shall be charged to each delinquent account at the time it is included in the assessment schedule, which amount shall be separately identified on the assessment schedule and included in the amount being assessed. The water works shall prepare an assessment schedule each month, listing all delinquent sewer, solid waste collection, and stormwater management service charges, and late payment charges, which accrued in the prior month. Such assessment schedule shall also identify each delinquent charge by name of the account holder in whose name the delinquent rates or charges were incurred, or property owner, shall identify each property for which the sewer, solid waste collection, and/or stormwater management

service charge is delinquent, and shall show the delinquent charges and the administrative processing fee to be assessed against each such property owned or rented by the delinquent account holder, unless said property is exempt as a residential rental property as described above. The water works shall forward the completed assessment schedule to the city's engineering department, which shall process said schedule for presentation to the city council. Upon council approval thereof, the city clerk shall certify and file said assessment schedule with the county treasurer for filing of liens against the properties in the amounts shown thereon as provided in I.C. § 384.84.

- (g) Such lien shall be enforced until payment in full of the delinquent charges and the administrative processing fee shown on the assessment schedule is made at the office of the county treasurer.

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

FORM APPROVED:

Glenna K. Frank
Glenna K. Frank
Assistant City Attorney