



**Roll Call Number**

**Agenda Item Number**

38

**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 Sections 98-70 and 98-79 and adding and enacting new Sections 98-79.02, 98-79-05 and 98-79.07 thereof, relating to solid waste collection and disposal",

presented. **(Council Communication No. 09-505)**

Moved by \_\_\_\_\_ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Ann DiDonato  
Ann DiDonato  
Assistant City Attorney

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

**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.

MOTION CARRIED APPROVED

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

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 Sections 98-70 and 98-79 and adding and enacting new Sections 98-79.02, 98-79-05 and 98-79.07 thereof, relating to solid waste collection and disposal.

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 Sections 98-70 and 98-79 and adding and enacting new Sections 98-79.02, 98-79-05 and 98-79.07 thereof, relating to solid waste collection and disposal, as follows:

**Sec. 98-70. Littering.**

No ~~person~~owner shall throw, rake, deposit, place, drop or spill yard debris, as defined in division ~~31~~ of this article, litter, solid waste, waste material or other foreign material upon the streets, sidewalks, or other public rights-of-way ~~within the city or city property~~ except as provided in sections 98-58 and 98-115 of this division. 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 of the residential dwelling, commercial establishment and/or real estate from which the yard debris, litter, solid waste, waste material or other foreign material was removed, shall be deemed to create a rebuttable presumption that such violator was the party violating this section.

**Sec. 98-79. Penalty.**

Any person who fails to perform an act required by this division or who commits an act prohibited by this division shall be guilty of a misdemeanor punishable by fine or imprisonment as provided by section 1-15 of this Code or shall be ~~guilty of~~deemed to have committed a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code. The first offense within a calendar year shall be deemed the first offense punishable by a civil penalty not to exceed \$250.00. The second and each subsequent offense within a calendar year shall be a repeat offense, punishable by a civil penalty not to exceed \$500.00. 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 this section.

**Sec. 98-79.02. 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 of any real estate who violates section 98-70. The administrative penalty for such violation 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 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 98-79.05. 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 thirty (30) days from issuance of the hearing decision to pay the administrative penalty.

**Sec. 98-79.05. 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 (3) 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.
  - (f) Failure to request a hearing within ten (10) 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. 98-79.07. 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. 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