

★ **Roll Call Number**

**Agenda Item Number**

31

Date July 23, 2012

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, as heretofore amended, by amending Section 118-159, relating to utility deposit",

which was considered and voted upon under Roll Call No. 12- 1112 of July 9, 2012; 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				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
<b>TOTAL</b>				
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:	July 9, 2012
Agenda Item No.	31
Roll Call No.	12-112
Communication No.	12-368
Submitted by:	William G. Stowe, Assistant City Manager – Public Works Director

**AGENDA HEADING:**

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, by amending Section 118-159, relating to utility deposits.

**SYNOPSIS:**

Recommend Council approval of amendments to Section 118-159 of the Municipal Code regarding utility deposits. These amendments establish a utility deposit for sewer, solid waste collection, and stormwater management services for residential rental property, and include other revisions consistent with the recent Iowa legislative changes to Iowa Code Section 384.84(3-4).

**FISCAL IMPACT:**

Amount: Minimal impact in initial years, as the deposit requirement will only apply to new customer accounts. Over time, the deposit requirement could result in as much as \$80,000 less going to collections in an average year, a portion of which would never be collected and a 25% fee would be charged on any amount that is collected.

Funding Source: Storm Water Utility Fund, Sanitary Sewer Utility Fund, Solid Waste Utility Fund

**ADDITIONAL INFORMATION:**

The Board of Water Works Trustees of the City of Des Moines, Iowa, doing business as Des Moines Water Works, acts as the billing agent, by agreement, for the following City of Des Moines Enterprise Utilities: sanitary sewer, solid waste, and stormwater.

Under the recommended amendments to Municipal Code Section 118-159, should the owner or landlord of the property give written notice of tenant liability for a residential rental property or premise, such real property or premise shall thereafter be exempt from the imposition of a lien as provided in the ordinance and provided in the Iowa Code. As provided for in House File 2323, signed by the Governor on April 12, 2012, the owner, landlord or tenant of a residential rental property will now be required to place a deposit, in an amount determined by the Public Works Director, that does not exceed the usual cost of ninety (90) days of service for sewer, solid waste collection, and stormwater management, in addition to the deposit for water service which was previously authorized by the Iowa Code and has been routinely collected for tenant accounts. The deposit amount is

currently estimated by the Public Works Director to total \$175.00 for all four utilities, based on current solid waste monthly fees, water and sanitary sewer fees, based on Des Moines' average monthly water usage with stormwater charges based on 1/2 Equivalent Residential Unit (ERU). The new deposit will only apply to new residential rental accounts opened after the approval of the recommended Municipal Code amendments. 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 30 business days of the change in tenant. When the tenant moves from the rental property, the Water Works shall return the deposit if all applicable charges, service charges, and sales tax have been paid in full, and the lien exemption shall be lifted from the rental property. Current accounts in good standing will not be affected by the deposit requirements and are to be considered "grandfathered" by the City of Des Moines and Des Moines Water Works staff, until such time, as the current account has been closed and a new account established for the affected residential rental property or premise.

The proposed Municipal Code revisions also require Des Moines Water Works to send a copy of a request from a tenant for change of name for service under an account, to also be sent to the owner or landlord of a property, if such notice has been made by written request by the owner or landlord to Des Moines Water Works, as required by House File 2323. House File 2323, also increases the time for notice to Des Moines Water Works of change in ownership for residential rental properties from 10 to 30 days, and allows for liens to be placed against residential rental properties for charges for repairs related to service of sewer, stormwater, sewage treatment, and solid waste systems, and the proposed ordinance revises Section 118-159 accordingly to make the Municipal Code consistent with the newly-enacted changes to State law.

#### **PREVIOUS COUNCIL ACTION(S):**

Date: January 23, 2012

Roll Call Number: 12-0106

Action: Final consideration of ordinance above (waiver requested by City Engineer), requires 6 votes. Moved by Hensley that the rule requiring that an ordinance must be considered and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #15,074. Motion Carried 7-0.

Date: January 23, 2012

Roll Call Number: 12-0105

Action: Amending Section 118-159 of the Municipal Code to remove specific reference to Polk County, and to provide for collection and placement of liens for sewer, solid waste and/or stormwater bills in both Polk and Warren Counties. (Council Communication No. 12-032). Moved by Hensley that this ordinance be considered and given first vote for passage. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S): NONE**

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**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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](mailto:cityclerk@dmgov.org).

## 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, as heretofore amended, by amending Section 118-159, relating to utility deposit.

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 Section 118-159 relating to utility deposit, 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 Board of Water Works Trustees of the City of Des Moines, Iowa, doing business as Des Moines Water Works ("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 said delinquent account holder. If the account holder is a tenant, and if the owner or landlord has 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. If the account holder is a tenant and requests a change of name for service under the account, such request shall be sent to the owner or landlord of the property if the owner or landlord has made a written request for notice of any change of name for service under the account to the rental property. Notice of delinquency shall be sent to such persons by ordinary mail to their last known addresses as reflected in the computer data base account records of the water works or in the applicable 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 account holder believes that his or her billing or account balance is in error, the 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) For all active accounts, 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, the water works shall send a notice of pending lien to the account holder in whose name the delinquent charges were incurred. If said delinquent account holder is a tenant, and the owner or landlord 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 applicable county, to such persons by ordinary mail to their last known addresses as reflected in the computer data base account records of the water works or in the applicable 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 117th day after the billing date for that delinquent account), the delinquent charge or charges will be certified to the applicable 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) For all final accounts, if full payment of all charges billed in a combined service account billing statement, including late payment charges, is not received within 60 days after the billing date, the water works shall send a notice of pending lien to the account holder in whose name the delinquent charges were incurred. If said delinquent account holder is a tenant, and the owner or landlord 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 applicable county, to such

persons by ordinary mail to their last known addresses as reflected in the computer data base account records of the water works or in the applicable 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 90<sup>th</sup> day after the billing date for that delinquent account), the delinquent charge or charges will be certified to the applicable county as a lien against the property or premises owned or rented by the account holder in whose name the delinquent account charges were incurred, unless said property is exempt as a residential rental property as described below.

- (f) If 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 service to that property or premises,~~ such property or premises shall thereafter be exempt from the imposition of a lien as hereafter provided. Such owner or landlord, or tenant thereof, shall cause a deposit to be made with water works in an amount determined by the public works director that does not exceed the usual cost of ninety (90) days of service for water, sewer, solid waste collection, and stormwater management, and 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~~ thirty (30) 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, or to charges for repairs related to a service of sewer systems, stormwater drainage systems, sewage treatment, solid waste collection, or solid waste disposal, 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 for final accounts. Any balance owing on said account after

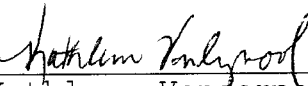
application of the deposit as above provided shall be carried forward and billed on the next billing statement of the account holder in whose name the delinquent rates or charges were incurred.

- (g) If full payment of all charges billed in a combined service active account billing statement, including late payment charges, is not received within 117 days after the billing date, the water works shall prepare an assessment schedule, as the city's billing and collection agent, listing such unpaid charges therein. If full payment of all charges billed in a combined service final account billing statement, including late payment charges, is not received within 90 days after the billing date, the water works shall prepare an assessment schedule, as the city's billing and collection agent, 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 at least once each month, listing all delinquent sewer, solid waste collection, and stormwater management service charges, and late payment charges, which accrued in the prior month or since the last assessment schedule was certified. Each 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, 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 treasurer of water works is hereby delegated the authority, on behalf of the city, to certify and file each such assessment schedule with the applicable county treasurer for filing of liens against the properties in the amounts shown thereon as provided in I.C. § 384.84. The treasurer of water works is hereby delegated the authority to correct sewer, solid waste and/or stormwater liens placed in error, to make corrections required by the applicable county due to district or parcel identification issues and to correct assessment schedules when liens are not authorized by statute to be placed or where payment has been made. The water works treasurer will provide a monthly report to the city finance director of any assessment schedule corrections made to the applicable county treasurer.
- (h) 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.



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

FORM APPROVED:

  
\_\_\_\_\_  
Kathleen Vanderpool  
Deputy City Attorney