

Date September 10, 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 Sections 114-485.12, 114-485.14, 114-485.15 and 114-485.16 and by repealing Sections 114-485.18 and 114-485.19 regarding appeals from the impoundment of vehicles",

presented.

MOVED by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Roger K Brown
 Roger K. Brown
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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, as heretofore amended, by amending Sections 114-485.12, 114-485.14, 114-485.15 and 114-485.16 and by repealing Sections 114-485.18 and 114-485.19 regarding appeals from the impoundment of vehicles.

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, be and is hereby amended by amending Sections 114-485.12, 114-485.14, 114-485.15 and 114-485.16 and by repealing Sections 114-485.18 and 114-485.19 regarding appeals from the impoundment of vehicles, as follows:

Chapter 114 TRAFFIC AND VEHICLES
Article XII. Criminal Responsibility

Sec. 114-485.12. Right of owner to redeem impounded vehicle.

- (a) The registered owner or person having a legal entitlement to possession of a motor vehicle impounded pursuant to section 114-485.11 of this article may redeem ~~claim~~ the vehicle by paying to the city its impound and preservation fee and in addition paying the city's towing contractor an amount sufficient to cover all of the towing contractor's charges attributable to the towing and storage of the vehicle. The city's impound and preservation fee shall be in the amount set in the schedule of fees adopted by the city council by resolution. If a hearing pursuant to the administrative appeal process set forth in chapter 3 of this code ~~section 114-485.16 of this article~~ is held and ~~a the administrative~~ hearing officer determines there was no probable cause to impound the vehicle, the costs attributable to the impoundment and storage not to exceed fifteen days shall be refunded by the city clerk through the normal procurement process. ~~upon the presentation to the city treasurer of the following:~~
- (1) ~~A certificate of no probable cause issued by the city; and~~
 - (2) ~~The bond receipt.~~
- (b) If a motor vehicle was impounded pursuant to section 114-485.02 of this article, all delinquent parking citation-complaints must be satisfied.
- (c) If the vehicle is not redeemed until a final determination has been entered pursuant to the administrative appeal process set forth in chapter 3 of this code, the vehicle may be redeemed upon payment of all charges referred to in section 114-485.16 of this article less any portion thereof subject to refund under paragraph (a) above. ~~not claimed until after a hearing requested pursuant to section 114-485.15 of this article, the vehicle may be claimed (i) upon payment of all charges referred to in section 114-485.16 of this article or (ii) upon presentation of a certificate of no probable cause within two working days of its issuance to~~

- the party in possession of the vehicle.
- (d) ~~Failure to timely present such certificate will result in assumed liability on the part of the owner or person having legal entitlement to possession to the vehicle for all related storage charges.~~

Sec. 114-485.14. Notice of impoundment.

When a vehicle has been impounded pursuant to this chapter, the registered owner of the vehicle shall be sent, by certified mail to the owner's last known address of record within 72 hours of the impoundment, excluding weekends and holidays, a notice of the impoundment along with a description of any personal property contained within the vehicle and of the right to a hearing pursuant to this article. Notice personally presented within such period to the owner or person having a legal entitlement to possession shall satisfy the mailing requirement. The notice shall identify: i) that the owner or any person having a legal entitlement to possession of the vehicle may appeal whether there was probable cause to impound the vehicle by filing a notice of appeal with the city clerk within ten business days of the date of such notice; and ii) if the appeal results in a determination that there was no probable cause to impound the vehicle, the costs attributable to the impoundment and storage not to exceed fifteen days will be refunded.

Sec. 114-485.15. Right to hearing.

- (a) The registered owner or a person having a legal entitlement to possession of a vehicle impounded pursuant to this article has a right to a post-seizure administrative hearing before an administrative hearing officer pursuant to the administrative appeal process set forth in chapter 3 of this Code designated by the city manager to determine whether there was probable cause to impound the vehicle and any personal property contained within the vehicle, provided the registered owner or person having a legal entitlement to possession files a written demand notice of appeal with the city clerk's office within ten business days of the date mailing of the notice of the impoundment. ~~A copy of this article shall be given to the person requesting a hearing.~~
- (b) Failure to request a hearing within such time period or to attend a scheduled ~~post-seizure hearing on such appeal~~ shall be deemed a waiver of the right to such a hearing.

Sec. 114-485.16. Conduct of hearing.

The post-seizure administrative hearing provided in this article shall be conducted pursuant to the administrative appeal process set forth in chapter 3 of this code. If the administrative hearing officer determines there was no probable cause to impound the vehicle, the costs attributable to the impoundment and storage not to exceed fifteen days shall be refunded pursuant to section 114-485.12 of this article. ~~The post-seizure administrative hearing provided in this article shall be conducted before the hearing officer designated by the city manager within a reasonable period of time, but not to exceed 15 business days, excluding Saturdays, Sundays and city holidays, from the date of receipt of a written demand therefor. Such hearing may be continued from time to time for good cause. The sole issue before the hearing officer shall be whether there was probable cause 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 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. If the hearing officer determines there was probable cause to impound the vehicle and contents, the registered owner or person having legal entitlement to possession of the vehicle is responsible for payment of all charges attributable to the impoundment and storage of the vehicle and the costs of the administrative hearing. If the hearing officer determines there was no probable cause, the hearing officer shall prepare a certificate of no probable cause, and the bond filed or charges paid shall be refunded pursuant to section 114-485.12 of this article. The proceedings at the administrative hearing shall be tape recorded by the hearing officer. Such tape recording shall serve as the official record of the administrative hearing for appeal purposes. The hearing officer shall retain all such tape recordings until the time for filing a notice of appeal has expired. If a notice of appeal is timely filed, the hearing officer shall retain the tape recorded record of the administrative hearing until the appeal has been acted upon by the city council. The decision of the hearing officer shall in no way affect any criminal proceeding in connection with the impoundment in question. Criminal charges, if any, may only be challenged in the appropriate court.

Sec. 114-485.18. Right to appeal hearing officer's decision.

— The decision of the hearing officer made pursuant to this article may be appealed to the city council by either the department causing the vehicle to be impounded or the registered owner or person having legal entitlement to possession of the impounded vehicle, provided the department or the registered owner or person having legal entitlement to possession of the impounded vehicle files a written notice of appeal with the city clerk's office within seven days of the hearing officer's decision. Failure to file a written notice of appeal within such period shall be deemed a waiver of the right to appeal the decision of the hearing officer to the city council.

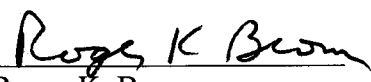
Sec. 114-485.19. Appeal process.

— The appeal filed under this article shall be considered and a decision rendered by the city council within 14 days of the filing of the written notice of appeal. The time for considering the appeal may be extended for good cause. The appeal process shall consist of a review by the city council of the transcript of the tape recorded record of the earlier administrative hearing. No additional evidence may be presented as a part of the appeal. The sole issue before the council shall be whether the decision of the hearing officer was supported by sufficient evidence. The decision of the city council on the question of probable cause is final. If the city council finds no probable cause, the hearing officer shall issue the certificate of no probable cause. The decision shall in no way affect any criminal proceeding in connection with the impoundment in question. Criminal charges, if any, may only be challenged in the appropriate court.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law. However, any administrative appeal for which the initial notice of appeal was received by the City Clerk prior to the date of such publication shall continue to be

governed by the procedural rules in effect at the time such appeal was so received.

FORM APPROVED:



Roger K. Brown
Assistant City Attorney