

★ **Roll Call Number**

Agenda Item Number

42

Date December 23, 2013

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, is hereby amended by amending Sections 42-458, 42-459, 42-460, 42-485 and 42-486, by repealing Sections 42-462, 42-463, 42-464, 42-488, 42-489, 42-490 and 42-491, and by adding and enacting new Sections 42-457.01 and 42-492.01, relating to use and maintenance of drainage facilities",

which was considered and voted upon under Roll Call No. 13- 1917 of December 9, 2013; 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				
VOSS				
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

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: December 9, 2013
	Agenda Item No. 40 Roll Call No. [13-1917] Communication No. 13-600 Submitted by: Patrick J. Kozitza, Public Works Director

AGENDA HEADING:

Amending administrative hearing and abatement process for nuisances associated with the use and maintenance of drainage facilities and illicit discharges into the storm sewer system.

SYNOPSIS:

Approving amendments to Divisions 1 and 2 of Article IX of Chapter 42, Use and Maintenance of Drainage facilities, relating to the abatement and administrative processes for the public nuisances of illicit discharges and inadequate maintenance or installation of drainage facilities. With these changes, the recently updated Municipal Code Chapter 42 processes for administrative hearings for the administrative penalty Notices of Violation process and the abatement of public nuisances, including the costs of abatement, would be followed. This should result in a more efficient administrative hearing process.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

Ordinance No. 15,191 revised the procedures set forth in Chapter 42, Article VI of the Municipal Code for nuisance abatement, notices, hearings and cost assessment. The proposed ordinance amends the City Code by amending Sections 42-458, 42-459, 42-460, 42-485, and 42-486, adding Sections 42-457.01 and 42-492.01 and repealing Sections 42-462, 42-463, 42-464, 42-488, 42-489, 42-490, and 42-491. The amended and new sections replace the nuisance abatement, notice, administrative hearing and cost assessment process with the current process in Chapter 42, Article VI.

PREVIOUS COUNCIL ACTION(S):

Date: June 10, 2013

Roll Call Number: 13-0917

Action: Amending Chapter 42 of the Municipal Code regarding nuisances, nuisance abatement, notices and hearings. Moved by Hensley that this ordinance do now pass, #15,191. Motion Carried 7-0.

Date: September 12, 2005

Roll Call Number: 05-2237

Action: Amending Chapter 42 of the Municipal Code regarding run-off and illicit discharge requirements of the City's National Pollution Discharge Elimination System maintenance of drainage facilities. Moved by Hensley that this ordinance do now pass, #14,484. Motion carried 6-1. Nays: Brooks.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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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, as heretofore amended, is hereby amended by amending Sections 42-458, 42-459, 42-460, 42-485 and 42-486, by repealing Sections 42-462, 42-463, 42-464, 42-488, 42-489, 42-490 and 42-491, and by adding and enacting new Sections 42-457.01 and 42-492.01, relating to use and maintenance of drainage facilities.

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 Sections 42-458, 42-459, 42-460, 42-485 and 42-486, by repealing Sections 42-462, 42-463, 42-464, 42-488, 42-489, 42-490 and 42-491, and by adding and enacting new Sections 42-457.01 and 42-492.01, relating to use and maintenance of drainage facilities, as follows:

Sec. 42-457.01. Administrative hearings.

Recipients of notice of violation pursuant to this article may request an administrative hearing as set forth in section 42-358(b) of this chapter. The conduct of such administrative hearing shall be as set forth in sections 42-358.02(c)(d) and (e) of this chapter. If the recipient of the notice of violation chooses to have an agent duly authorized by the recipient to file a request for an administrative hearing and/or to represent him/her at the hearing, such agent must be identified in a notarized statement filed with the request for administrative hearing.

Sec. 42-458. Determination of illicit discharges as public nuisance and notice of abatement.

- (a) Discharges in violation of this division are deemed to constitute a public nuisance.
- (b) If the director determines that a discharge in violation of this division has occurred or is occurring, such nuisance may be abated and enforced against and the costs of such abatement

~~invoiced and assessed as set forth in and pursuant to article VI of chapter 42 of the Code. the director shall give notice of the existence of the nuisance pursuant to section 42-463 and order abatement of such nuisance. The city may cause such pollutant to be abated, after providing the owner of the real property from which the pollutant originated or the property owner abutting a public drainageway with notice of the need to abate such nuisance and that if not abated the city will cause such abatement and will assess the costs for such abatement. Service of the abatement notice shall be by regular mail, addressed to the owner of the real property, or by posting on the property if the address of the owner is unknown. The notice shall provide at least a twenty-four (24) hour period for abatement of the nuisance by the property owner prior to the city's abatement and notice of the right to a hearing on the finding of a public nuisance pursuant to section 42-463.~~

~~(c) Provided, however, that the city may cause such abatement without prior notice in the event that such illicit discharge presents a imminent risk of harm to person or property, and the director declares an emergency on account thereof.~~

Sec. 42-459. Right to assess costs of abatement by city.

~~When the city abates an illicit discharge pursuant to article VI of chapter 42, section 42-463 of this division, the city may assess the actual costs of abating such illicit discharge to the owner of the real estate found to be in violation of this division, section 42-458 of this division pursuant to sections 42-458 through 42-464 of this division, in addition to taking any other action provided for in this division.~~

Sec. 42-460. Assessment of costs of abatement by city.

The actual cost of abating illicit discharges to the MS4 from public or private property shall be paid by the owner of the real property determined to be the source of such discharge, in violation of ~~section 42-458~~ this division, and such costs shall be assessed against such real estate if not paid by the owner.

Sec. 42-462. Repealed by Ord. No. 15, ---. Allocation of cost.

~~The cost of abating a violation under this division shall be paid from the proper fund and when collected shall be credited to that fund.~~

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Sec. 42-463. Repealed by Ord. No. 15,--- Notice of right to administrative hearing on public nuisance.

- ~~(a) When the city makes a finding of a public nuisance pursuant to section 42-458, a notice shall be given to the owner of the property subject to assessment of the right to an administrative hearing regarding the existence of and responsibility for the public nuisance, and regarding the costs of the removal. The notice shall contain the following information:~~
- ~~(1) A description, to the extent possible, of the public nuisance;~~
 - ~~(2) A description of the location where the nuisance was abated;~~
 - ~~(3) An indication of the date and time that the city caused the abatement, and that the costs of the abatement have been or will be assessed against the real estate from which the abatement occurred;~~
 - ~~(4) An itemization of the costs incurred by the city in the abatement of the nuisance;~~
 - ~~(5) That the person notified, or the person's duly authorized agent, may file a written request for hearing as set forth in this section; and~~
 - ~~(6) That failure to make a written request for a hearing to the city clerk within ten days the date of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the nuisance and abatement occurred and costs will be assessed against the real estate without further notice.~~
- ~~(b) Service of the notice provided for in subsection (a) hereof shall be by regular mail, addressed to the owner of the real estate from which the illicit discharge originated, or shall be by posting upon such property if the address of the owner is unknown.~~

Sec. 42-464. Repealed by Ord. No. 15,--- Administrative hearing for public nuisance and assessment of costs of removal.

- ~~(a) Any person in receipt of a notice pursuant to section 42-463 may have, upon written request made in writing and filed with the city clerk within ten (10) days of the date of issuance of the notice, an administrative hearing before the city manager, or before a hearing officer appointed by the city manager, to determine if a public nuisance has occurred, to determine if the amount to be assessed is reasonable and if the assessment shall be placed against the subject property.~~
- ~~(b) A request for hearing shall: (1) contain the address of the person requesting the hearing and to which all further notices shall be mailed or served; and (2) shall state the basis for the appeal.~~

- ~~(c) The hearing shall be scheduled to be held as soon as practicable and no later than 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 days in advance thereof.~~
- ~~(d) At such hearing the department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.~~
- ~~(e) The city manager or hearing officer may determine whether or not a public nuisance occurred, who is responsible for the nuisance, whether the city caused the abatement of the nuisance in accordance with this division, and whether the assessment for costs of abatement is reasonable or should be reduced or waived, as appropriate.~~
- ~~(f) The determination of the hearing officer is a final administrative decision.~~
- ~~(g) Failure to request a hearing within ten 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 property owner is responsible for the public nuisance.~~

Sec. 42-485. Notice of abatement.

- ~~(a) If the director determines that a storm water drainage nuisance as described in section 42-484 of this division has occurred or is occurring, such nuisance may be abated and enforced against and the costs of such abatement invoiced and assessed as set forth in and pursuant to article VI of chapter 42 of the Code. the director shall give notice of the existence of the nuisance and order abatement of such nuisance. The city may cause the removal of a substandard drainage pipe, or the cleaning or repair of an improperly maintained public drainageway on private property, private drainageway or private drainage pipe, after providing the owner of the real property upon which is located the substandard private drainage pipe, or the improperly maintained drainageway or drainage pipe with notice of the need to abate the nuisance by removing such substandard private drainage pipe or by cleaning or repairing such improperly maintained drainageway or drainage pipe, and that if not abated the city will cause such abatement and will assess the costs for such abatement against the property. Service of the abatement notice shall be by regular or certified mail, addressed to the owner of the real property, or by posting on the property of the address of the owner is unknown. The notice shall provide at least a twenty-four (24) hour period for abatement of the nuisance by the property owner prior to the city's abatement and notice of the right to~~

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~~a hearing on the finding of a public nuisance pursuant to Sec. 42-490.~~

~~(b) Provided, however, that the city may cause the immediate abatement of such nuisance without prior notice in the event that such substandard drainage pipe or such improperly maintained drainageway or drainage pipe presents an imminent risk of harm to person or property, and the director declares an emergency on account thereof.~~

Sec. 42-486. Right to assess costs of abatement by city.

When the city removes an illicit discharge pursuant to article VI, chapter 42 ~~section 42-485~~ of this division, the city may assess the actual costs of removing such illicit discharge to the owner of the real estate found to be in violation of this division. ~~section 42-448~~ of this division pursuant to ~~sections 42-485 through 42-491~~ of this division, in addition to taking any other action provided for in this division.

Sec. 42-488. Repealed by Ord. No. 15,--- ~~Certification of assessment for collection.~~

~~Upon adoption by the city council, the schedule of assessments for the removal of a substandard drainage pipe from public or private property, or for the maintenance or repair of a public drainageway on private property, a private drainageway or a private drainage pipe, and the resolution approving such, shall be certified by the city clerk to the county auditor for collection in the manner provided by law.~~

Sec. 42-489. Repealed by Ord. No. 15,--- ~~Allocation of cost.~~

~~The cost of abating a violation under this division shall be paid from the proper fund and when collected shall be credited to that fund.~~

Sec. 42-490. Repealed by Ord. No. 15,--- ~~Notice of right to administrative hearing on public nuisance.~~

~~(a) When the city makes a finding of a public nuisance pursuant to section 42-485, a notice shall be given to the owner of the property subject to assessment of the right to an administrative hearing regarding the existence of and responsibility for the public nuisance, and regarding the costs of the removal. The notice shall contain the following information:~~

~~(1) A description, to the extent possible, of the public nuisance;~~

~~(2) A description of the location where the nuisance was~~

abated;

- ~~(3) An indication of the date and time that the city caused the abatement, and that the costs of the abatement have been or will be assessed against the real estate from which the abatement occurred;~~
 - ~~(4) An itemization of the costs incurred by the city in the abatement of the nuisance;~~
 - ~~(5) That the person notified, or the person's duly authorized agent, may file a written request for hearing as set forth in this division; and~~
 - ~~(6) That failure to make a written request for a hearing within ten days the date of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the nuisance and abatement occurred and costs will be assessed against the real estate without further notice.~~
- ~~(b) Service of the notice provided for in subsection (a) hereof shall be by regular mail, addressed to the owner of the real estate upon which the public nuisance occurred, by posting upon the property if the address of the owner is unknown.~~

Sec. 42-491. Repealed by Ord. No. 15, ---. ~~Administrative hearing for public nuisance and assessment of costs of removal.~~

- ~~(a) Any person in receipt of a notice pursuant to section 42-490 may have, upon written request made in writing and filed with the city clerk within ten (10) days of the date of issuance of the notice, an administrative hearing before the city manager, or before a hearing officer appointed by the city manager, to determine if the amount to be assessed is reasonable and if the assessment shall be placed against the subject property.~~
- ~~(b) A request for hearing shall: (1) contain the address of the person requesting the hearing and to which all further notices shall be mailed or served; and (2) shall state the basis for the appeal.~~
- ~~(c) The hearing shall be scheduled to be held as soon as practicable and no later than 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 days in advance thereof.~~
- ~~(d) At such hearing the department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.~~
- ~~(e) The city manager or hearing officer may determine whether or not a public nuisance occurred, who is responsible for the nuisance, whether the city caused the removal of the nuisance in accordance with this division, and whether the assessment for costs of abatement is reasonable or should be reduced or waived, as appropriate.~~

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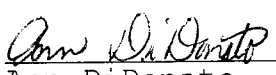
- ~~(f) The determination of the hearing officer is a final administrative decision.~~
- ~~(g) Failure to request a hearing within ten days of the date of issuance of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the violator is responsible for the public nuisance.~~

Sec. 42-492.01. Administrative hearings.

Recipients of notice of violation pursuant to this article may request an administrative hearing as set forth in section 42-358(b) of this chapter. The conduct of such administrative hearing shall be as set forth in sections 42-358.02(c)(d) and (e) of this chapter. If the recipient of the notice of violation chooses to have an agent duly authorized by the recipient to file a request for an administrative hearing and/or to represent him/her at the hearing, such agent must be identified in a notarized statement filed with the request for administrative hearing.

Section 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