

★ Roll Call Number

Agenda Item Number

54

Date April 11, 2016

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 1-15, relating to the general penalty for misdemeanors",

presented.

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

FORM APPROVED:

(First of three required readings)

Jessica D. Spoden
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MOORE, WESTERGAARD, and 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 Section 1-15, relating to the general penalty for misdemeanors.

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 1-15 relating to the general penalty for misdemeanors, as follows:


**Sec. 1-15. General penalty.**

- (a) Whenever in this Code or in any city ordinance any act is prohibited or is made or declared to be unlawful or an offense or whenever in this Code or in any city ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, if the act is not declared to be a misdemeanor or a municipal infraction and if no specific penalty is provided therefor, the violation of any such provision shall be deemed to be a misdemeanor punishable by a fine not to exceed the maximum amount of dollars or imprisonment not to exceed the maximum number of days as provided in Section 903.1, subsection 1, paragraph a of the Iowa Code ~~exceeding \$500.00 or by imprisonment not exceeding 30 days.~~
- (b) Whenever in this Code or in any city ordinance any act is prohibited and is declared to be a misdemeanor or whenever in this Code or in any city ordinance the doing of any act is required and the failure to do that act is declared to be a misdemeanor, the violation of any such provision shall be punishable by a fine not to exceed the maximum amount of dollars or imprisonment not to exceed the maximum number of days as provided in Section 903.1, subsection 1, paragraph a of the Iowa Code.
- (c) Whenever in this Code or in any city ordinance any act is prohibited and is declared to be a municipal infraction or whenever in this Code or in any city ordinance the doing of any act is required and the failure to do that act is declared to be a municipal infraction, the violation of any such provision shall be punishable by a civil penalty of not more than \$750.00 for each violation or, if the infraction is a repeat offense, by a civil penalty of not more than \$1,000.00 for each repeat offense. However, a municipal infraction which is classified as an environmental violation or which arises from noncompliance with a pretreatment standard or requirement, referred to in 40 CFR 403.8, by an industrial user may be punishable by a civil penalty of not more than \$1,000.00 for each day a violation exists or continues. Each day a violation of a provision of this Code or of a city ordinance continues shall be considered a separate municipal infraction.
- (d) In addition to seeking the imposition of a civil penalty as provided in this section, the city attorney may seek all other appropriate remedies allowed by law in regard to the abatement, correction, or discontinuance of activities which constitute municipal infractions.

- (e) Municipal infractions may be initially brought upon simple notice and if the person charged admits the violation, upon payment of the penalty to the city treasurer and the performance of any other act required by law to be performed, such person shall not be further prosecuted or assessed any costs or other expenses for such violation, and the city shall retain all penalties thus collected. Where a municipal infraction is not admitted upon simple notice by the person charged or where the person charged fails to perform any other act required to be performed, or both, an action seeking a penalty shall be brought in the state district court. Any action seeking a penalty for a municipal infraction, with or without additional relief, may be initially brought in the state district court. This section does not impose a duty to initially charge all municipal infractions upon simple notice. Municipal infractions that are not brought upon simple notice may be brought pursuant to Section 364.22 of the Iowa Code, and the civil citation shall serve as notification that a civil offense has been committed.
- (f) Notwithstanding subsections (c) and (d) of this section, a municipal infraction will not be initiated for any infraction classified as an environmental infraction and referred to in I.C. ch. 455B until an offer is made to participate in informal negotiations with the person. If the person accepts the offer, the city and the person shall participate in good faith negotiations to resolve issues alleged to be the basis for the violation. If the city is unable to contact the person or is unable to resolve the issues alleged to be the basis for the violation, a municipal infraction may be initiated against the person.

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

FORM APPROVED:

  
 \_\_\_\_\_  
 Jessica D. Spoden  
 Assistant City Attorney