



Roll Call Number

Agenda Item Number

50 ✓

Date June 26, 2017

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 3-26, 3-27, 3-28, 3-29 and 114-243, relating to the State Income Tax Offset Program",

presented.

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

FORM APPROVED:

(First of three required readings)

Thomas G. Fisher Jr.
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 Sections 3-26, 3-27, 3-28, 3-29 and 114-243, relating to the State Income Tax Offset Program.

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 3-26, 3-27, 3-28, 3-29 and 114-243, relating to the State Income Tax Offset Program, as follows:

Division 4. State Income Tax Offset Procedures Des Moines Debt Offset Program

Sec. 3-26. Statement of Purpose.

This division provides procedures to follow in the event that the city seeks to collect ~~legally enforceable~~ debts owed to the city by placement of such ~~qualified~~ debts in the state program established by state law ~~and maintained by~~ and subject to a Memorandum of Understanding between the Iowa Department of Administrative Services and the city to offset debts owed to the city against debts owed by the state to the debtor. ~~the debts against a person's state income tax refund pursuant to Iowa Code section 8A.504 and the Iowa Administrative Rules implemented thereunder.~~

Sec. 3-27. Notice of Intent to Place Debt; Informal Opportunity to Challenge Placement of Debt.

- (a) A department director or his or her designee shall make a good faith effort to collect a ~~qualified~~ debt. If such effort to collect is not successful, notice shall be provided to the debtor by regular mail that the debt will be placed in the offset program and that the debtor shall have an informal opportunity to challenge such placement by filing the challenge with the finance director within ten days of the date of notice.
- (b) If a challenge to the placement of the debt in the offset program is timely filed, the finance director or his or her designees shall notify the debtor of the date and time that it will conduct an informal hearing on such challenge. At such informal hearing the debtor shall be provided with an opportunity to present its challenge either in-person or by electronic means. After the informal hearing, a determination on the challenge shall be delivered to the debtor by regular mail.

Sec. 3-28. Placement of Debt and Notification of Offset.

After notification and completion of any informal challenge to placement, the finance director or his or her designee shall notify the state of the existence of the debt pursuant to the requirements of the Iowa Department of Administrative Services. ~~place the debt in the offset program in accordance with the procedures set forth in the applicable Iowa Administrative Rules and as otherwise established by the Iowa Department of Administrative Services.~~ If the Iowa Department of Administrative Services notifies the city of a potential offset of a debt, the finance director or his or her designee shall within ten days send notification by regular mail to the debtor that shall include:

- (1) The city's right to the payment in question.
- (2) The city's right to recover the payment through the offset procedure.
- (3) The basis of the city's case in regard to the debt.
- (4) The right of the debtor to request the split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.
- (5) The debtor's right to appeal the offset and required appeal procedures set forth in this chapter.
- (6) The name of the city as the public agency to which the debt is owed, with a telephone number for the debtor to contact the city regarding questions about the offset.

Sec. 3-29. Appeal of Offset

Following notification, a debtor may appeal the application of an offset by initiating an administrative appeal pursuant to section 3-16. The administrative appeal shall be scheduled and conducted in accordance with sections 3-17—3-25. In the event of an appeal, funds collected by the city shall be held by the city until a ruling issued by the administrative hearing officer as to the amount that can be retained by the city or refunded to the debtor. The administrative hearing officer has jurisdiction to determine whether the debt is owed by the debtor, whether there is an error in the amount of the debt and whether the debt is properly placed in the city offset program. When determining these issues, the hearing officer shall consider only whether the city complied with the Des Moines Municipal Code and has no jurisdiction to consider issues related to the Memorandum of Understanding with the Department of Administrative Services or issues related to state law, state regulations, or the state and federal constitutions. The administrative hearing officer does not have the authority to set aside court judgments or scheduled civil or criminal violations in which the debtor failed to seek available judicial review. Scheduled civil violations include automated traffic enforcement notices of violation if the recipient of the notice failed to contest the notice pursuant to section 114-243(2). If a hearing or issuance of a civil citation is not timely requested pursuant to section 114-243(2) or pursuant to an administrative hearing available at the time the notice was issued, the notice of violation is deemed a debt subject to placement in the Des Moines Debt Offset Program for purposes of appeals under this section.

Sec. 114-243. Civil Automated Traffic Enforcement

(a) General. The city of Des Moines, in accordance with the police powers authorized it by the state of Iowa for governing safe traffic flow, may deploy, erect or cause to have erected an automated traffic enforcement system for making video images of vehicles that fail to obey red light traffic signals at intersections designated by the city manager or his designee or fail to obey speed regulations at other locations in the city. The system may be managed by the private contractor that owns and operates the requisite equipment with supervisory control vested in the city's police department. Video images shall be provided to the police department by the contractor for review. The police department will determine which vehicle owners are in violation of the city's traffic control ordinances and are to receive a notice of violation for the offense.

(b) Definitions. The following phrases or terms when used in this section shall have the meanings ascribed to them herein:

Automated traffic enforcement system means an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic controller or police department employee to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control device or speed restriction.

Vehicle owner means the person or entity identified by the Iowa Department of Transportation, or registered with any other state vehicle registration office, as the registered owner of a vehicle.

(c) Offense.

(1) The vehicle owner shall be liable for a civil penalty as imposed below if such vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light or red arrow.

(2) The vehicle owner shall be liable for a civil penalty as imposed below if such vehicle travels at a speed above the posted speed limit.

(3) The violation may be rebutted by a showing that a stolen vehicle report was made on the vehicle encompassing the time period in question.

(4) ~~The citation will in no event be sent or~~ notice of violation shall not be reported to the Iowa Department of Transportation or similar department of any other state for the purpose of being added to the vehicle owner's driving record.

(d) Penalty and Appeal.

(1) Any violation of subsection (c)(1) or subsection (c)(2) above shall be considered for a notice of violation for which a civil penalty in the amount specified in the schedule of administrative penalties adopted by city council by resolution shall be imposed, payable to the city of Des Moines at the city's finance department or a designee.

(2) A recipient of an automated traffic ~~citation~~ enforcement notice of violation may dispute the ~~citation~~ notice of violation by requesting an administrative hearing pursuant to chapter 3 or by requesting issuance of a municipal infraction ~~citation~~ by the police department. The request for an administrative hearing or issuance of a municipal infraction must initially be made within 30 days of the date that the

notice of violation is issued. If the recipient of an automated traffic notice of violation who requests an administrative hearing is not satisfied with the determination of the hearing officer, he or she may request the police department to issue a municipal infraction within 30 days of the date of determination. If a timely request is made to the police department for the issuance of a municipal infraction, the city may issue a municipal infraction or dismiss the notice. Such request will result in a required court appearance by the recipient and in the scheduling of a trial before a judge or magistrate at the Polk County Courthouse. The issuance of a municipal infraction citation will cause the imposition of state mandated court costs to be added to the amount of the violation in the event of a guilty finding by the court.

- (3) ~~If a recipient of an automated traffic citation does not pay the civil penalty by the stated due date or request a trial before a judge or magistrate, a municipal infraction citation will be issued to the recipient by certified mail from the police department. Said municipal infraction citation will result in a mandatory court appearance by the recipient as well as imposition of state mandated court costs if a finding of guilty is made by the court.~~

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

FORM APPROVED:



Thomas G. Fisher Jr.
Assistant City Attorney