

Date March 8, 2018

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 42-348, 42-351, 42-360, 70-276, 70-277, 102-1122, 102-1125, 102-1126 and 102- 1127, by repealing Sections 70-278, 70-279 and 70-280, and by adding and enacting new Sections 42-351.01, 42-351.02, 70-275 and 70-278, relating to graffiti, to street use permits, and to banners",

presented.

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

FORM APPROVED:

(First of three required readings)

Ann DiDonato
Ann DiDonato
Assistant City Attorney

(Council Communication No. 18-101)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
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

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 42-348, 42-351, 42-360, 70-276, 70-277, 102-1122, 102-1125, 102-1126 and 102- 1127, by repealing Sections 70-278, 70-279 and 70-280, and by adding and enacting new Sections 42-351.01, 42-351.02, 70-275 and 70-278, relating to graffiti, to street use permits, and to banners.

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 42-348, 42-351, 42-360, 70-276, 70-277, 102-1122, 102-1125, 102-1126 and 102-1127, by repealing Sections 70-278, 70-279 and 70-280, and by adding and enacting new Sections 42-351.01, 42-351.02, 70-275 and 70-278, relating to graffiti and to street use permits, as follows:

Sec. 42-348. Specifically identified nuisances.

Specifically identified nuisances include the following:

-
- (8) Graffiti as is defined in division 2 of article VI of chapter 70 of this Code, ~~when placed on any surface not primarily intended for such use, except as specifically permitted therein.~~ Owners of property on which such graffiti is present shall be responsible and liable for the removal of such graffiti pursuant to section 42-352.
-

Sec. 42-351. Action to abate.

Except as provided in section 42-351.01, ~~If~~ if a department determines that a nuisance exists, such nuisance may be abated and enforced against by notice as set forth in this article, and pursuant to:

- (1) A civil action brought by ordinary proceedings, with damages sustained on account thereof, the costs of abatement and civil penalties to be recovered as a personal and/or in rem judgment;
- (2) The administrative hearings described in this article, with damages and/or the cost of abatement sustained on account thereof to be recovered as an assessment to be

- placed against the real property and collected in the same manner as a property tax;
or
- (3) Any other action authorized by law to protect the public health, safety or welfare, including, but not limited to, injunctive relief.

Sec. 42-351.01. Abatement of graffiti on city property.

Any department of the city may remove or otherwise abate graffiti as defined in division 2 of article VI of chapter 70 of this code on property that is owned, leased, maintained or operated by the city at any time, for any reason, without providing notice, including notices required by section 42-358. The requirements of sections 42-351 and 42-358.02 do not apply to the abatement or removal of graffiti on property that is owned, leased, maintained or operated by the city.

Sec. 42-351.02. Abatement of graffiti on private property located within city property and right-of-way.

Any department of the city may remove or otherwise abate graffiti on any utility poles and cabinets, or other utility structures, or any private property, located on any property owned, leased, maintained or operated by the city, including within the public right-of-way, without providing notice, including notices required by section 42-358. The requirements of sections 42-351 and 42-358.02 do not apply to such abatement or removal of graffiti. Reasonable care shall be taken to avoid damage to such private property. In the event of abatements performed by the city under this section, the expense of such abatement shall be borne by the city.

Sec. 42-360. Emergency actions.

If the department determines that a nuisance exists which constitutes an emergency requiring immediate abatement, the city may perform any emergency action necessary to abate the nuisance without prior notice or abatement hearing.

If the chief of police, or his or her designee, determines that graffiti on private real property constitutes an emergency requiring immediate abatement, the city may perform any emergency action necessary to abate the nuisance without prior notice or abatement hearing. In the event of abatements performed by the city under this section, the expense of such abatement shall be borne by the city.

Sec. 70-275. Purpose and intent.

The purpose of this division is to prevent the spread of graffiti and to require and provide for its removal from city and other public and private property. The presence of graffiti on both city and other public and private buildings, structures, or places causes blight within the city, which leads to a deterioration of property values for surrounding properties and neighborhoods, to the detriment of the city. The city council finds and determines that graffiti is a public nuisance which must be abated to avoid the detrimental impact on the city.

Sec. 70-276. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Graffiti means any marking, inscription, drawing, picture, letter, number, symbol or other defacement or other written communication, etched, scratched, or made with sprayed, painted spray paint, paint, ink, chalk, dye, or similar substance, or in any manner, or in some manner inscribed on any public or private property, including, but not limited to, streets, sidewalks, buildings, or walls, bridges, fences, or other structures which was made without the consent and under the direction of the owner of such property surfaces not intended primarily for such use.

Minor means a person under 18 years of age.

Spray paint means any liquified or semi-liquified substance that when released under pressure will produce a colored substance where sprayed without the use of any other implement or mechanism.

Cross reference(s)--Definitions generally, § 1-2.

Sec. 70-277. ~~License required.~~ Graffiti prohibited.

- (a) No person shall by use of any substance whatsoever, inclusive of spray paint, mark, create, make or inscribe graffiti upon any public or private property, including but not limited to streets, sidewalks, buildings, walls, bridges, fences or other structures, sidewalk or other property privately held without the consent and under the direction of the owner, with the owner to present to such person a license obtained from the city. No owner may permit or cause graffiti to be painted on surfaces not intended primarily for such use unless such owner obtains a license.
- (b) ~~No person shall by use of any substance whatsoever, inclusive of spray paint, inscribe graffiti upon any structure, street surface or any other public property without obtaining a license.~~
- (c) ~~Every applicant for a license to inscribe graffiti on public or private property shall apply in writing to the city clerk. The application shall be submitted at least 30 days prior to the proposed date of engaging in graffiti activity.~~
- (d) ~~All applications for a license shall contain the following information:~~
- ~~(1) The name, address and age of the applicant if a natural person; if the application is made on behalf of an organization, the name and address of the organization.~~
 - ~~(2) The names and phone numbers of contact persons.~~
 - ~~(3) A description and drawing of the intended graffiti, including the exact area and structures that will be the subject of the graffiti activity and the purpose and duration of such graffiti.~~
- (e) ~~Regarding all surfaces presently inscribed with graffiti and not having been licensed, the owner thereof shall obtain a license permitting the retention of such graffiti for a specified time and purpose or shall have such graffiti removed within 30 days of the publication of the ordinance from which this section derives.~~

Sec. 70-278. Minors. Repealed by Ord. No. 15,---

~~— No license to engage in graffiti activity shall be issued to a minor. Any minor engaging in graffiti activity shall be under the direct supervision and control of the person or organization issued a license.~~

Sec. 70-278. Penalty.

Any person who violates section 70-277 shall be guilty of a misdemeanor punishable by fine as provided by section 1-15 of this code or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this code.

Sec. 70-279. License fee and issuance of license. Repealed by Ord. No. 15,---

- ~~(a) — An applicant for a graffiti license shall submit a fee to the city clerk at the time of filing this application.~~
- ~~(b) — If the application is denied or if the application is withdrawn before final action is taken by the city clerk, a portion of the application fee shall be retained by the city clerk for the cost of administration.~~
- ~~(e) — The license fee and its nonrefundable portion for a license shall be in the amounts set in the schedule of fees adopted by the city council by resolution.~~

Sec. 70-280. Issuance of license. Repealed by Ord. No. 15,---

~~— When the city clerk is satisfied that all the requirements of this division have been met successfully, the license shall be issued.~~

Sec. 102-1122. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of Des Moines, in the county of Polk, in the state of Iowa.

Entertainment district means a specifically identified area or zone of the city, other than residential, which is composed of a group or organization of businesses such as restaurants and bars.

Farmer's or public market means the sale of products, the majority of which have been produced in the state, including but not limited to, raw fresh vegetables, fruit, honey, herbs, flowers, plants, nuts, baked goods or handcrafted items which conform to all applicable city, county or state health and safety provisions, particularly state department of agriculture regulations, and which are offered for sale by any person, persons, business, or organization on a portion of, or entirely on a public street, sidewalk, alley, park or public place during set hours, no more than two days per week within a one-year period.

Person means any natural person, his or her heirs, executors, administrators or assigns, firm, partnership, association, corporation, company or organization, its or their successors or assigns, or the agent of any of them.

Residential event means a neighborhood-centered activity on a non-primary street in an area that is not zoned commercial or industrial.

Street means that portion of the public right-of-way normally used for vehicular traffic and including the abutting bicycle lanes and sidewalks except for any portion of the sidewalk that has been leased or licensed.

Timed event means any event, activity, competition or race, not including the use of motorized vehicles, involving three or more people for which the successful completion relies upon a participant's time or order of finish which obstructs the free flow of pedestrian or vehicular traffic on the streets, sidewalks, alleys or public places of the city.

Sec. 102-1125. Application.

- (a) *Contents.* A written application for a street use permit by persons or groups desiring the same shall be made on a form provided by the city manager's office and shall be filed with the city manager's office. The application shall set forth the following information regarding the proposed street use:
- (1) The name, address, telephone number, facsimile number and e-mail address of the applicant(s) or sponsor(s) of the event and contact person(s).
 - (2) If the proposed street use is to be conducted for, on behalf of, or by an organization, the name, address, and telephone number of the headquarters of the organization and of the authorizing responsible heads of such organization.
 - (3) The date(s) and duration of time for which the requested use of the street is proposed to occur.
 - (4) An accurate description of that portion of the street proposed to be used, including a map, proposed location of banners and temporary inscriptions or markings in the closed portion of the street to be used, and full description of event route if applicable including street closure times.
 - (5) The estimated number of participants/attendees.
 - (6) The proposed use, described in detail, including a description of the activities planned.
 - (7) After initial filing of the application, any additional information may be requested that the street use team deems reasonably necessary to make a fair determination as to whether a permit should be issued, including but not limited to a crowd control/security plan and a traffic control barricade plan. These plans can be prepared by an outside contractor or the person or representative of the group applying for a street use permit. There will be an additional fee charged if city staff prepares the traffic control barricade plan or the crowd control/security plan.
- (b) *Deadline for applications.*
- (1) Applications that include a commercially zoned district must be submitted not less than 90 calendar days prior to the date of the event. Applications received less than

90 days in advance will be assessed the late fee set in the schedule of fees and may be denied.

- (2) Applications limited to a residential district must be submitted not less than 30 calendar days prior to the date of the event. Applications received less than 30 days in advance will be assessed the late fee set in the schedule of fees and may be denied.

(c) *Petition required.*

- (1) For all street closure applications with planned street closures at any one location lasting more than 1 hour except events taking place entirely in a residentially zoned district, a petition is required designating the proposed areas of the street to be used and the time of the proposed use. The petition shall be signed by more than 60 percent of the business owners either abutting or within a building that abuts the portion of the street to be closed for more than one hour.
- (2) A good faith attempt shall be made to obtain signatures from all business owners/managers either abutting or within a building that abuts the portion of the street to be closed for more than one hour.
- (3) Applications with petitions that do not have more than 60 percent approval pursuant to this section will be denied unless appealed pursuant to section 102-1133 of this division.
- (4) The petition form shall be available from the street use team and when completed the petition may be verified by the street use team.
- (5) Applicants who have obtained a farmers or public market permit for the current year pursuant to sections 102-556 through 102-564 are exempt from the petition required by this section.

- (d) *Notice.* The applicant shall provide notice of the event to all residents and commercial tenants, owners, and lessees satisfactory to the street use team including maps, closure times, and contact information.

Sec. 102-1126. Application process.


- (a) Upon receipt of a completed street use permit application, the non-refundable application fee(s), petition, map, and any accompanying materials, the ~~city clerk~~ manager's office shall immediately forward copies of the application to the street use team.
- (b) The team shall evaluate the application and materials using the standards found elsewhere in this article or other city ordinances. The team shall either approve with conditions as necessary to ensure the safety of the public and provide for an orderly event, or deny the application. Upon approval, the city clerk shall issue the permit, including any special provisions or conditions.
- (c) The approval or denial of a completed application by the team shall be made to the applicant as soon as reasonably practicable.

Sec. 102-1127. Related licenses and permits/vendor exception.

- (a) All related licenses and permits required by the Des Moines Municipal Code shall be obtained by licensee/permittee, except banner license requirements do not apply under this article. Proposed banners and inscriptions or markings are subject to the approval of the street use team. The street use team will advise which additional licenses and permits may be required based upon information provided by the applicant.
- (b) A vendor that has permission to operate within the street closure may operate under the street use permit if authorized by the street use permit holder and shall not be required to obtain a license or permit while participating in the event except for either the sale of alcoholic beverages, or sales made where a sidewalk café lease or license has been issued.

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