



**Date** September 9, 2019

RESOLUTION LEVYING ASSESSMENTS FOR COSTS OF  
PUBLIC WORKS SEWER REPAIR  
SCHEDULE NO. 2019-02, ACTIVITY ID 20-1111-000,  
AND PROVIDING FOR THE PAYMENT THEREOF

WHEREAS, pursuant to its powers and duties as set out in Chapter 364, Code of Iowa, the City had given notice to the property owner and an opportunity to cure, and where the property owner requested the City to perform the required action to abate the public nuisance, and now the City seeks, as provided in 364.12, Code of Iowa, to assess the costs of such action against the property set out on the attached Public Works Sewer Repair, Schedule No. 2019-02, Activity ID 20-1111-000, for collection in the same manner as a property tax.

NOW, THEREFORE BE IT RESOLVED BY THIS CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the attached Public Works Sewer Repair, Schedule No. 2019-02, Activity ID 20-1111-000, is hereby approved and adopted with the amounts shown thereon assessed and levied against such property for collection in the same manner as a property tax.

BE IT FURTHER RESOLVED: That said assessment shall be payable in five equal annual installments and shall bear interest at the rate of 3.52% percent per annum, from the date of the acceptance of this assessment schedule; the one installment of each assessment with interest on the whole assessment from date of acceptance of this schedule by the Council, shall become due and payable on July 1, 2020, and shall be paid at the same time and in the same manner as the September semiannual payment of ordinary taxes. Said assessment shall be payable at the office of the County Treasurer of Polk County, Iowa, in full or in part and without interest within thirty days after first date of publication of the Notice to Property Owners of filing of the schedule of assessments.

BE IT FURTHER RESOLVED, that the Clerk be and is hereby directed to certify said schedule to the County Treasurer of Polk County, Iowa, and to publish notice of said certification once each week for two consecutive weeks in the Des Moines Register, a newspaper printed wholly in the English language, published in Des Moines, Iowa, and of general circulation in Des Moines, Iowa, the first publication of said notice to be made within fifteen days from the date of the filing of said schedule with the County Treasurer, the City Engineer shall send by regular mail to all property owners whose property is subject to assessment a copy of said notice, said mailing to be on or before the date of the second publication of the notice, all as provided and directed by Code Section 384.60, Code of Iowa.



Roll Call Number

Agenda Item Number

15

Date September 9, 2019

Moved by \_\_\_\_\_ to adopt.

FORM APPROVED:

*Kathleen Vanderpool*

Kathleen Vanderpool  
Deputy City Attorney

SLN

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

ASSESSMENT SCHEDULE NO 2019-02

PAGE 1  
DATE 5/6/2019

Public Works Sewer Repair ACT 526070 PW071001

DESCRIPTION OF PROPERTY	CERTIFICATE NUMBER	PROPERTY ADDRESS OWNERS NAME	DATE AND TYPE	COST	INCID	TO BE ASSESSED
080/01726-000-000	40-00010-00	1824 Jefferson Ave T1 ROBERT B JAMES	4/15/2019 SEWER REPAIR	\$ 13,600.00	\$ 100.00	\$ 13,700.00
LOT 11 REPLAT OF ELMWOOD PLACE						
1824 JEFFERSON AVE						
DES MOINES, IA 50314-1406						
TOTALS				\$ 13,600.00	\$ 100.00	\$ 13,700.00



## OFFICIAL NOTICE TO ABATE PUBLIC NUISANCE

RE: 1824 Jefferson Ave  
Des Moines, IA 50324

VIA REGULAR AND CERTIFIED MAIL

TO: Joyce A James,

Please be advised that the City of Des Moines' Department of Public Works has inspected your property locally known as **1824 Jefferson Ave**, Des Moines, Iowa, and legally described as (**LOT 11 REPLAT OF ELMWOOD PLACE**). Upon inspection, the Public Works Department has determined that a public nuisance exists on your property adjacent to the City right-of-way by reason of a faulty sewer service, which is creating a hazardous condition in the public roadway which is undermining or will undermine the street and sidewalk, pursuant to Des Moines Municipal Code Sections 42-347, "Nuisance Construed", and 42-348, "Specifically Identified Nuisances", subsection (16), which identifies as a nuisance "discharging sewage...into or any public or private real property."

You are hereby **ORDERED** to abate this nuisance by the repair of your sewer service within **14** days of the date of this Notice. If you fail to take this action within 14 days of the date of this Notice, as required by Des Moines Municipal Code Chapter 42, Article VI, you shall be deemed liable for the nuisance and the City of Des Moines Public Works Department may enter upon your property and may make or cause to be made the necessary sewer repairs within your property, including all other actions required to abate the nuisance, and assess the cost and repairs thereof to you and against your property, which expenses shall be certified as a lien against your property and collected in the same manner as a property tax, following administrative hearing if requested and in accordance with Iowa Code Section 364.12(3)(a) and (h) and Des Moines Municipal Code Chapter 42, Article VI.

If you have any questions about this Notice, please contact our Sewer Operations Manager, Steve Johnson at (515) 237-1359. Please contact the City's Permit and Development Center, located at City Armory Building, 602 Robert D. Ray Drive, Des Moines, Iowa 50309, or by phone at (515) 283-4200, prior to beginning work to abate the nuisance in order to determine if any permits are required for the corrective work.

You or your duly authorized agent, as identified in a notarized statement provided by you, may file a written request for an administrative hearing regarding this determination of a public nuisance. If you decide to make a request for an administrative hearing, you are required to either hand-deliver such request or send such request via regular mail (postmarked by official U.S. postal service cancellation and not by postage meter) within seven (7) calendar days of the date of this Notice to: City Clerk, City of Des Moines, Iowa, 400 Robert D. Ray Drive, Des Moines, Iowa 50309. Such request for administrative hearing must be in writing and must

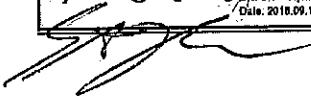
include your name, address, electronic mail (e-mail) address, and daytime telephone number, and must include the same contact information for any attorney and/or agent duly authorized by you to represent you at the administrative hearing, and must include the basis for your appeal of the determination in this Notice. If you request an administrative hearing, you and your attorney or agent, if identified, will receive notice of the date and time of the hearing at either the address, e-mail address or phone number provided in your request for hearing at least three (3) business days in advance of the hearing. Failure to request a hearing within seven (7) calendar days from the date of this Notice shall be deemed a waiver of your right to contest the validity of the determination of nuisance, and abatement by the City may proceed as indicated herein. For further information, please see Des Moines Municipal Code Section 42-358.02.

Dated this 17<sup>th</sup> day of September, 2018, at Des Moines, Iowa.

Jonathan Gano  
Public Works Director  
City of Des Moines, Iowa

BY:

scjohnson@dmgov.org  
Digitally signed by: scjohnson@dmgov.org  
DN: CN = scjohnson@dmgov.org  
Date: 2018.09.17 13:08:12 -0500



5



1714 NE 61st PL  
Des Moines, IA 50313

# Invoice

Date	Invoice #
4/15/19	12-1101-948

<b>Bill To</b>
City of Des Moines Department of Public Works ATTN: Steve Johnson 216 SE 5th St Des Moines, IA 50309

<b>Job Address</b>
1824 Jefferson Ave Des Moines, IA #19908712

<b>Terms</b>
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Due on receipt
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Description	Qty	Rate	Amount
Replaced sewer line from curb to main in street.	1	13,600.00	13,600.00
Please remit to above address.		<b>Total</b>	\$13,600.00
		<b>Payments/Credits</b>	\$0.00
		<b>Balance Due</b>	\$13,600.00

<b>Please Remit Payment To:</b>
Torgerson Excavating INC 1714 NE 61st PL Des Moines, IA 50313
Phone #: 515-270-4625

# Polk County Assessor

111 Court Avenue #195  
Des Moines, IA 50309-0904

(515) 286-3014 Fax (515) 286-3386  
[polkweb@assess.co.polk.ia.us](mailto:polkweb@assess.co.polk.ia.us)

Location					
<b>Address</b>	1824 JEFFERSON AVE				
<b>City</b>	DES MOINES	<b>Zip</b>	50314	<b>Jurisdiction</b>	Des Moines
<b>District/Parcel</b>	080/01726-000-000	<b>Geoparcels</b>	7924-33-277-011	<b>Status</b>	Active
<b>School</b>	Des Moines	<b>Nbhd/Pocket</b>	DM76/Z	<b>Tax Authority Group</b>	DEM-C-DEM-77131
<b>Submarket</b>	Northwest Des Moines	<b>Appraiser</b>	John Catron 515-286-3021		

## Map and Current Photos - 1 Record

Click on parcel to get a new listing

1917 1913 1909 1905 1901 1827 1821 1819 1815 1811 1807

JEFFERSON AVE

1824 1822 1820 1916 1824 1822 1820 1808 1806  
1900

1915 1913 1911 1909 1901 1825 1823 1821 1815 1807 1805

[Bigger Map](#) [Polk County GIS](#)  
[Google Map](#) [Pictometry](#)

Photo Processed on 2012-03-28 a



## Historical Photos

## Ownership - 2 Records

Ownership	Num	Name	Recorded	Book/Page
Title Holder	1	JAMES, ROBERT B	2005-09-01	11261/308
Title Holder	2	JAMES, JOYCE A		

## Legal Description and Mailing Address

LOT 11 REPLAT OF ELMWOOD PLACE	ROBERT B JAMES 1824 JEFFERSON AVE DES MOINES, IA 50314-1406
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## Current Values

Type	Class	Kind	Land	Bldg	Total
2019 Assessment Roll	Residential	Full	\$8,100	\$37,500	\$45,600
2018 Value	Residential	Full	\$7,200	\$34,200	\$41,400

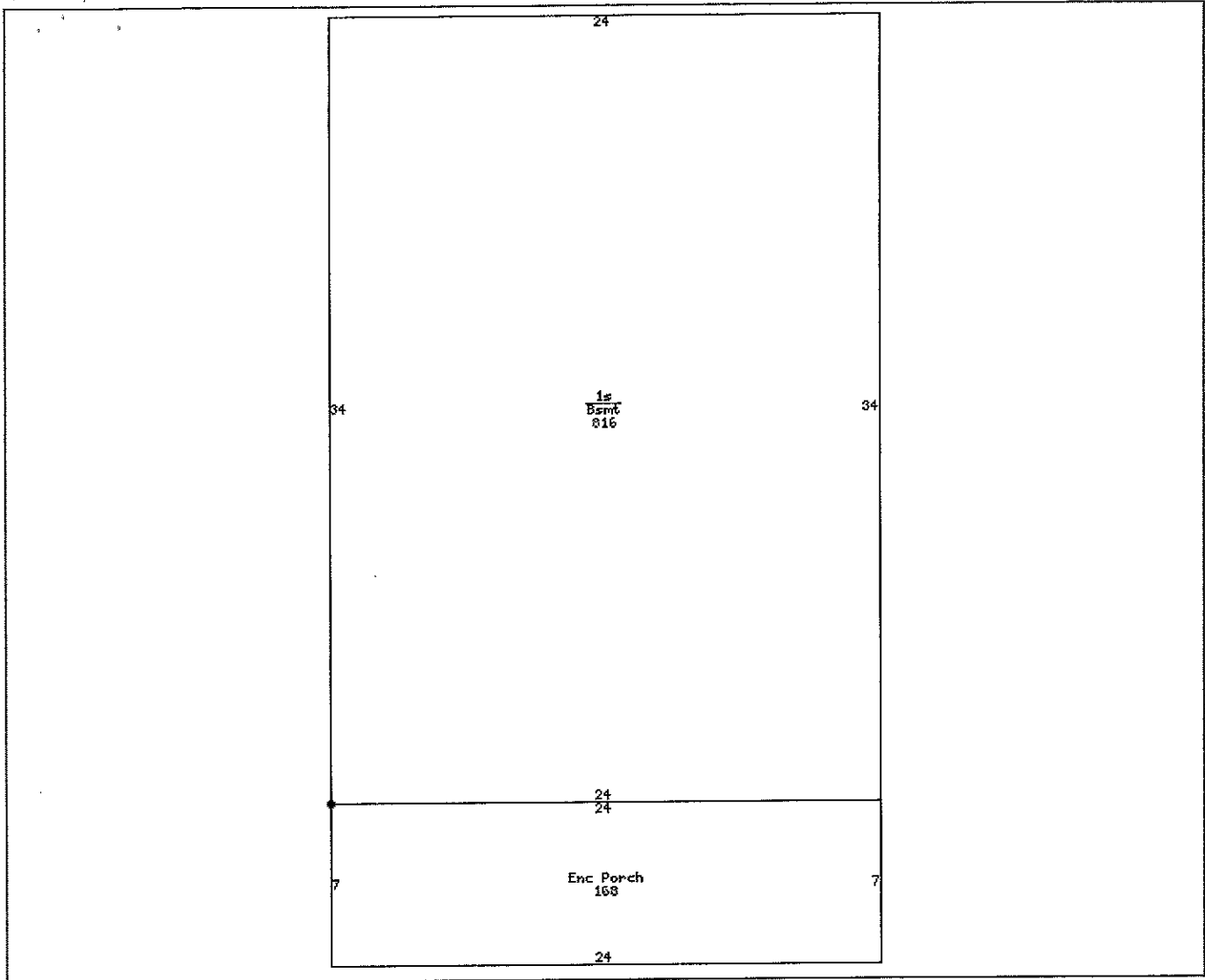
[Assessment Roll Notice](#) [Market Adjusted Cost Report](#)

## Auditor Adjustments to Value

Category	Name	Information

Category		Name		Information	
2018 Homestead Credit		JAMES, ROBERT B		Application #185429	
<b>Zoning - 1 Record</b>					
Zoning	Description			SF	Assessor Zoning
R1-60	One Family, Low Density Residential District				Residential
<b>Conditional Zoning</b>					
Docket no <u>14361</u>					
<i>City of Des Moines Community Development Planning and Urban Design 515 283-4182 (2012-03-20)</i>					
<b>Land</b>					
Square Feet	6,950	Acres	0.160	Frontage	50.0
Depth	139.0	Topography	Normal	Shape	Rectangle
Vacancy	No	Unbuildable	No		
<b>Residences - 1 Record</b>					
<b>Residence #1</b>					
Occupancy	Single Family	Residence Type	1 Story	Building Style	Bungalow
Year Built	1917	Number Families	1	Grade	5+10
Condition	Above Normal	Total Square Foot Living Area	816	Main Living Area	816
Basement Area	816	Enclosed Porch Area	168	Foundation	Brick
Exterior Wall Type	Metal Siding	Roof Type	Hip	Roof Material	Asphalt Shingle
Heating	Gas Forced Air	Air Conditioning	100	Number Bathrooms	1
Bedrooms	2	Rooms	5		





**Sales - 6 Records**

Seller	Buyer	Sale Date	Sale Price	Instrument	Book/Page
NGUYEN, LY	JAMES, ROBERT B	<u>2005-08-23</u>	\$56,000	Deed	<u>11261/308</u>
BANKERS TRUST CO, (CUSTODIAN)	NGUYEN, LY	<u>2002-10-15</u>	\$15,000	Deed	<u>9430/737</u>
CONTRACT FINANCE LC	MILLER, CATHY S	<u>1998-11-06</u>	\$43,900	Contract	<u>8054/490</u>
CONTRACT EXCHANGE, CORP	CONTRACT FINANCE, L.C.	<u>1998-07-31</u>	\$25,500	Contract	<u>7999/957</u>
DRAYTON, SHEILA	CONTRACT EXCHANGE CORPORATION	<u>1998-07-29</u>	\$22,000	Deed	<u>7972/649</u>
LEWIS, JULIANA M	DRAYTON, SHEILA	<u>1991-10-01</u>	\$20,000	Contract	<u>6446/971</u>

**Permits - 1 Record**

Year	Type	Permit Status	Application	Description
1999	Pickup	Complete	1999-01-13	correct data/condition

**Historical Values**

<b>Yr</b>	<b>Type</b>	<b>Class</b>	<b>Kind</b>	<b>Land</b>	<b>Bldg</b>	<b>Total</b>
2017	<u>Assessment Roll</u>	Residential	Full	\$7,200	\$34,200	\$41,400
2015	<u>Assessment Roll</u>	Residential	Full	\$7,200	\$34,300	\$41,500
2013	<u>Assessment Roll</u>	Residential	Full	\$8,000	\$34,400	\$42,400
2011	<u>Assessment Roll</u>	Residential	Full	\$8,600	\$41,300	\$49,900
2009	<u>Assessment Roll</u>	Residential	Full	\$6,400	\$43,300	\$49,700
2007	<u>Assessment Roll</u>	Residential	Full	\$6,100	\$41,500	\$47,600
2005	<u>Assessment Roll</u>	Residential	Full	\$7,200	\$28,400	\$35,600
2003	<u>Assessment Roll</u>	Residential	Full	\$5,980	\$24,190	\$30,170
2001	<u>Assessment Roll</u>	Residential	Full	\$4,210	\$17,290	\$21,500
1999	Assessment Roll	Residential	Full	\$5,040	\$33,460	\$38,500
1997	Assessment Roll	Residential	Full	\$4,120	\$16,580	\$20,700
1995	Assessment Roll	Residential	Full	\$3,840	\$15,460	\$19,300
1989	Assessment Roll	Residential	Full	\$3,320	\$13,380	\$16,700

This template was last modified on Sat Mar 4 12:31:48 2017 .



OFFICIAL NOTICE TO ABATE PUBLIC NUISANCE

RE: 1824 Jefferson Ave  
Des Moines, IA 50314

VIA REGULAR AND CERTIFIED MAIL

TO: Joyce A James,

You have already received notice that an inspection by the Public Works Department of the City of Des Moines found that a nuisance exists in front of your property locally known as 1824 Jefferson Ave, Des Moines, Iowa, and legally described as (LOT 11 REPLAT OF ELMWOOD PLACE) by reason of a faulty sewer service which is creating a hazardous condition in the public roadway by possible undermining of the street and sidewalk, pursuant to Des Moines Municipal Code Sections 42-347, "Nuisance Construed", and 42-348, "Specifically Identified Nuisances", subsection (16), which identifies as a nuisance "discharging sewage...into or any public or private real property."

We spoke on December 6<sup>th</sup>, 2018, at which time you indicated that you would like the City to proceed with getting bids and making repairs to the sewer at 1824 Jefferson Ave.

I have now received three estimates and have included copies for your review. The low bid is from Torgerson Excavation for \$13,600. This is an estimate and the costs are subject to change based upon the conditions of the repair.

Prior to proceeding, I wanted you to be aware of the competitive bid costs of the repairs. Unless we hear from you by February 11<sup>th</sup>, 2019, we will plan to award the project to Torgerson Excavation, with all costs to be assessed against your property. If you have any questions, please contact me at 237-1359.

Dated this 28<sup>th</sup> day of January 28, 2019 at Des Moines, Iowa.

Jonathan Gano  
Public Works Director  
City of Des Moines, Iowa

BY:

Steve Johnson  
Digitally signed by Steve Johnson  
DN: cn = Steve Johnson, email = sjohnson@dmq.org, o = City of Des Moines Public Works, ou = Public  
Works  
Date: 2019.01.28 10:41:52 -0600



OFFICIAL NOTICE TO ABATE PUBLIC NUISANCE

RE: 1824 Jefferson Ave  
Des Moines, IA 50314

VIA REGULAR AND CERTIFIED MAIL

TO: Robert B James,

You have already received notice that an inspection by the Public Works Department of the City of Des Moines found that a nuisance exists in front of your property locally known as 1824 Jefferson Ave, Des Moines, Iowa, and legally described as (LOT 11 REPLAT OF ELMWOOD PLACE) by reason of a faulty sewer service which is creating a hazardous condition in the public roadway by possible undermining of the street and sidewalk, pursuant to Des Moines Municipal Code Sections 42-347, "Nuisance Construed", and 42-348, "Specifically Identified Nuisances", subsection (16), which identifies as a nuisance "discharging sewage...into or any public or private real property."

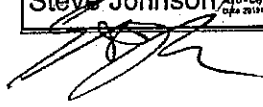

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Dated this 28<sup>th</sup> day of January 28, 2019 at Des Moines, Iowa.

Jonathan Gano  
Public Works Director  
City of Des Moines, Iowa

BY:  



OFFICIAL NOTICE TO ABATE PUBLIC NUISANCE

RE: 1824 Jefferson Ave  
Des Moines, IA 50314

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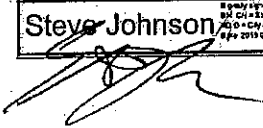
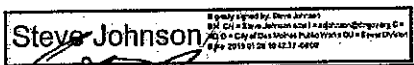
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Dated this 28<sup>th</sup> day of January 28, 2019 at Des Moines, Iowa,

Jonathan Gano  
Public Works Director  
City of Des Moines, Iowa

BY:  

5

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Joyce James  
 1824 Jefferson Ave  
 Des Moines, IA 50324



590 9402 1953 6123 0476 61

Number (Transfer from service label)

7011 1150 0001 5367 6110

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

*Joyce James*

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

*Joyce James*

*9/27/18*

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Restricted Delivery

USPS TRACKING #



First-Class Mail  
Postage & Fees Paid

RECEIVED  
USPS  
Permit 60610

9590 9402 1953 6123 0476 61

SEP 25 2018

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

PUBLIC WORKS DEPT  
CITY OF DES MOINES

City of Des Moines Public Works  
Steve Johnson – Sewer Department  
216 SE 5<sup>th</sup> St  
Des Moines, IA 50309-4820



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert B. James  
 1824 Jefferson Ave  
 Des Moines, IA 50324



9590 9402 1953 6123 0476 54

2. Article Number (Transfer from service label)

7011 1150 0001 5367 6103

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

Agent

Addressee

B. Received by (Printed Name)

Robert James

C. Date of Delivery

8/22/11

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

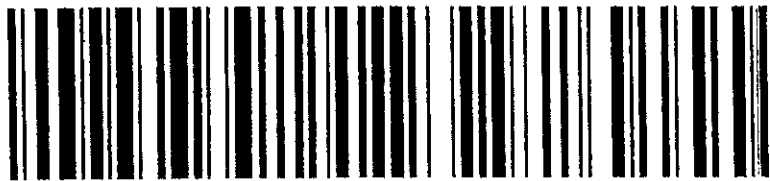
- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Restricted Delivery



USPS TRACKING #



9590 9402 1953 6123 0476 54



RECEIVED

First-Class Mail  
Postage & Fees Paid  
Permit No. G-10

SEP 25 2018

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4 in this box •

PUBLIC WORKS  
CITY OF DES MOINES

City of Des Moines Public Works  
Steve Johnson – Sewer Department  
216 SE 5<sup>th</sup> St  
Des Moines, IA 50309-4820





OFFICIAL NOTICE REGARDING COSTS OF PUBLIC NUISANCE

RE: 1824 Jefferson Ave  
Des Moines, Iowa

VIA REGULAR  
AND  
CERTIFIED MAIL

TO: Joyce A James:

Please be advised that the City of Des Moines' Department of Public Works has completed the public nuisance abatement work upon your property locally known as 1824 Jefferson Ave, Des Moines, and legally described as (LOT 11 REPLOT OF ELMWOOD). Upon inspection, the Public Works Department determined that a public nuisance existed on your property adjacent to the City right-of-way by reason of a faulty sewer service, which created a hazardous condition in the public roadway which was undermining or would have undermined the street and sidewalk. Notice of this condition was given to you on the 17<sup>th</sup> day of September.

Due to your failure to abate the condition within the time set forth in said prior notice, the City has abated the nuisance by making the necessary sewer repairs within your property at the cost shown on the attached invoice. This invoice was the cost provided by the lowest responsive, responsible bidder, including any change orders.

You are hereby directed to make full payment of the enclosed invoice within 14 calendar days of the date of this Notice. Said payment can be made by certified check or money order made payable to the City of Des Moines and mailed to the following address: City of Des Moines, Attn: Jason M Underwood, Public Works Department, Operations Manager. If you fail to make such payment within 14 calendar days of the date of this Notice, the City of Des Moines Public Works Department and City Council may assess the full cost against your property, which cost shall be certified as a lien against your property and collected in the same manner as a property tax, following administrative hearing if requested and in accordance with Iowa Code Section 364.12(3)(a) and (h) and Des Moines Municipal Code Chapter 42, Article VI.

If you have any questions about this notice, please contact our Operations Manager, Jason M Underwood at (515) 283-4968.

You or your duly authorized agent, as identified in a notarized statement provided by you, may file a written request for an administrative hearing on costs of abatement only, as set forth in this notice. If you decide to make a request for an administrative hearing, you are required to either hand-deliver such request or send such request via regular mail (U.S. postal service) within seven (7) calendar days of the date of this letter to: City Clerk, City of Des Moines, Iowa, 400 Robert D. Ray Drive, Des Moines, Iowa 50309. Such request for administrative hearing must be in writing and must include your name, address, electronic mail (e-mail) address, and daytime telephone number, and must include the same contact information for any attorney and/or agent duly authorized by you to represent you at the administrative hearing, and must include the basis for contesting the determination. Failure to request a hearing within seven (7) calendar days from the date of this notice shall be deemed a waiver of your right to contest the validity of the determination of costs, and assessment of the abatement costs as shown on the attached invoice may proceed as indicated herein. For further information, please see Des Moines Municipal Code Section 42-358.02(b).

Dated this 7th day of June 2019, at Des Moines, Iowa.

Jonathan Gano  
Public Works Director  
City of Des Moines, Iowa

BY: 



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Please be advised that the City of Des Moines' Department of Public Works has completed the public nuisance abatement work upon your property locally known as 1824 Jefferson Ave, Des Moines, and legally described as (LOT 11 REPLOT OF ELMWOOD). Upon inspection, the Public Works Department determined that a public nuisance existed on your property adjacent to the City right-of-way by reason of a faulty sewer service, which created a hazardous condition in the public roadway which was undermining or would have undermined the street and sidewalk. Notice of this condition was given to you on the 17<sup>th</sup> day of September.

Due to your failure to abate the condition within the time set forth in said prior notice, the City has abated the nuisance by making the necessary sewer repairs within your property at the cost shown on the attached invoice. This invoice was the cost provided by the lowest responsive, responsible bidder, including any change orders.

You are hereby directed to make full payment of the enclosed invoice within 14 calendar days of the date of this Notice. Said payment can be made by certified check or money order made payable to the City of Des Moines and mailed to the following address: City of Des Moines, Attn: Jason M Underwood, Public Works Department, Operations Manager. If you fail to make such payment within 14 calendar days of the date of this Notice, the City of Des Moines Public Works Department and City Council may assess the full cost against your property, which cost shall be certified as a lien against your property and collected in the same manner as a property tax, following administrative hearing if requested and in accordance with Iowa Code Section 364.12(3)(a) and (h) and Des Moines Municipal Code Chapter 42, Article VI.

If you have any questions about this notice, please contact our Operations Manager, Jason M Underwood at (515) 283-4968.

You or your duly authorized agent, as identified in a notarized statement provided by you, may file a written request for an administrative hearing on costs of abatement only, as set forth in this notice. If you decide to make a request for an administrative hearing, you are required to either hand-deliver such request or send such request via regular mail (U.S. postal service) within seven (7) calendar days of the date of this letter to: City Clerk, City of Des Moines, Iowa, 400 Robert D. Ray Drive, Des Moines, Iowa 50309. Such request for administrative hearing must be in writing and must include your name, address, electronic mail (e-mail) address, and daytime telephone number, and must include the same contact information for any attorney and/or agent duly authorized by you to represent you at the administrative hearing, and must include the basis for contesting the determination. Failure to request a hearing within seven (7) calendar days from the date of this notice shall be deemed a waiver of your right to contest the validity of the determination of costs, and assessment of the abatement costs as shown on the attached invoice may proceed as indicated herein. For further information, please see Des Moines Municipal Code Section 42-358.02(b).

Dated this 7th day of June 2019, at Des Moines, Iowa.

Jonathan Gano  
Public Works Director  
City of Des Moines, Iowa

BY: 

City of Des Moines  
400 Robert D. Ray Drive  
Des Moines, IA 50309

ROBERT JAMES, JR.  
1824 Jefferson Avenue  
Des Moines, IA 50314

Appeal No. 20DSM0008

Appellant,

v.

CITY OF DES MOINES,

**FINAL DETERMINATION**

Respondent.

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**STATEMENT OF THE CASE**

A hearing in this matter was held at Des Moines City Hall on July 17, 2019. The Appellant appeared and presented testimony. Steven Johnson and Jason Underwood were present as representatives for the City of Des Moines (City). The City submitted exhibit A, pages 1-22, which was admitted into the record without objection.

**FINDINGS OF FACT**

The City inspected the property located at 1824 Jefferson Avenue, Des Moines, Iowa. The Appellant is the individual responsible for the property. Upon inspecting the property, the City determined that a public nuisance existed on the property adjacent to the City right of way. A faulty sewer system created a hazardous condition in the public roadway, which would undermine the street or sidewalk. (p. 3). The City ordered the Appellant to abate the nuisance by repair of the sewer service within 14 days of the date of the notice. The notice was dated September 17, 2018.

The Appellant began seeking bids to repair the sanitary sewer line, and received a bid from Torgerson Excavating on October 3, 2018, to "[R]eplace sanitary sewer line from street side of sidewalk to main in street." The bid was for \$9,600.00. The City spoke with the Appellant on December 6, 2018, and the parties determined that the City would move forward with the competitive bid process, garnering three bids from local companies. The City received a bid from Torgerson Excavating on January 2, 2019, to "[R]eplace sewer line from curb to main in street" for \$13,600.00. The second bid was from Rhiner's Plumbing for \$15,731.50; and the third was from Becker Construction for \$14,800.00. (p. 11-13). The Appellant notified the City that the bid from Torgerson was substantially higher than an identical bid that he had received, so questioned whether the City could use another company. The City explained that it had to use the lowest competitive bid, barring any extreme extenuating circumstances. (Johnson testimony)

The City moved forward with the excavation performed by Torgerson. On June 7, 2019, the City mailed a letter to the Appellant notifying him that the City "had abated the nuisance by making the necessary sewer repairs within your property adjacent to the City right-of-way by reason of a faulty sewer service, which created a hazardous condition in the public roadway which was undermining or would have undermined the street and sidewalk." The City directed the Appellant to make payment within 14 days of this letter. The Appellant appealed. (p. 15)

At hearing, the Appellant explained that he was appealing because there was such a stark difference in the two bids from Torgerson. He was not accusing anyone of wrongdoing, but wanted to bring the significant differences in the estimates to everyone's attention. The Appellant also spoke with Torgerson regarding the divergent estimates and their only response was that the second estimate occurred during the winter, and it was more difficult to perform excavation in frozen ground. The Appellant understood, but noted that the work was not actually performed until April, so the ground had thawed. (James testimony)

### CONCLUSIONS OF LAW

A property owner holds title to property subject to the authority of the state to regulate use and enjoyment of property, so as to prevent and abate public nuisances.<sup>1</sup> As a result, "[a] municipality, in the exercise of its police power, may declare and abate nuisances by adopting and enforcing reasonable ordinances."<sup>2</sup> The City passed an ordinance defining a nuisance as:

Whatever is injurious or dangerous to the public health, safety or welfare, including but not limited to those things or actions which are offensive to the senses, or an obstruction to the free use of property so as to unreasonably interfere with the comfortable enjoyment of life or property, or which are identified specifically as nuisances in this article, is a nuisance.<sup>3</sup>

Specifically identified as a nuisance is "[D]ischarging sewage, garbage, or any other organic waste matter into or on any public or private real property."<sup>4</sup>

If the City determines that a nuisance exists, the City may abate the nuisance and enforce against the property owner by notice and pursuant to an administrative hearing procedure. Damages and/or the cost of abatement will be recovered as an assessment to be placed against the real property and collected in the same manner as a property tax.<sup>5</sup> Costs of abatement are defined as "the reasonable costs incurred by the [C]ity in abating a

<sup>1</sup> *Hancock v. City Council of City of Davenport*, 392 N.W.2d 472, 475 (Iowa 1986).

<sup>2</sup> *Id.* (citing *City of Cedar Falls v. Flett*, 330 N.W.2d 251, 255 (Iowa 1983)).

<sup>3</sup> Des Moines Municipal Code § 42-347.

<sup>4</sup> *Id.* at 42-347 (16).

<sup>5</sup> *Id.* at § 42-351.

nuisance.”<sup>6</sup> These costs may include, but are not limited to, the costs for labor, police officers, equipment used, and overhead or administrative expenses.”<sup>7</sup>

Before the City abates a nuisance, the City shall give notice. The only circumstance when notice is not required is in the event of an emergency, in which case notice will only be given as is practical under the circumstances.<sup>8</sup> Notice of costs of abatement shall also be given prior to City assessment of such costs.<sup>9</sup> Recipients of either type of notice may request an administrative hearing.<sup>10</sup> The scope of the administrative hearing depends on whether the notice being appealed is a notice to abate the nuisance or a notice of costs of abating the nuisance.<sup>11</sup> For hearings following notice to abate a nuisance, the hearing officer shall either find that a nuisance exists, or void or reverse the notice.<sup>12</sup> If the hearing officer finds that a nuisance exists and the recipient of the notice presents plans to personally abate the notice, then the hearing officer may grant additional reasonable time for that person to abate the nuisance.<sup>13</sup>

For hearings following notice of costs of abatement, the hearing officer shall uphold the amount billed, reduce the amount billed, or waive the costs.<sup>14</sup> The hearing officer shall not determine any other issue relating to the nuisance abatement, including but not limited to, any issue that may have been raised at a hearing following notice to abate a nuisance.<sup>15</sup> Any costs not waived by the hearing officer may be assessed against the real property for collection in the same manner as a property tax.<sup>16</sup>

The Appellant is appealing the cost of abatement that was issued charging \$13,600.00 for the abatement, and as a result, the issue is whether the billed costs should be reduced or waived. The Appellant’s reason for appeal was the significant difference in bids from Torgerson Excavating. The Appellant received a bid on October 3, 2018 for \$9,600.00, in order to “[R]eplace sanitary sewer line from street side of sidewalk to main in street.” The City received a bid on January 2, 2019 for \$13,600.00, to “[R]eplace sewer line from curb to main in street.” The description of the work in the two Torgerson bids appears to be nearly identical. The only difference being the price and date of the bid.

The Appellant was polite and respectful to the process, and his argument and associated frustration are understandable. Unfortunately, the undersigned cannot consider the October bid. The City followed the competitive bid process and chose the lowest bid to perform the work. The City cannot control the bids or any previous bids provided by a

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<sup>6</sup> *Id.* at § 42-346.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at § 42-358(a).

<sup>9</sup> *Id.* at § 42-358(b).

<sup>10</sup> *Id.* at § 42-358.02(b).

<sup>11</sup> *Id.* at § 42-358.02(c).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at § 42-358.02(c)(5).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



company. The governing ordinance instructs that "the cost of abatement will be recovered as an assessment to be placed against the real property and collected in the same manner as a property tax."<sup>17</sup> Because the Appellant is ultimately responsible for the property, he is responsible for the cost of abatement.

Again, the Appellant's reason for appeal and associated frustration are completely understandable, but the undersigned has no discretion to consider other bids, or find that the bid chosen by the City was incorrect in this situation. As such, the City's action is affirmed.

### ORDER

The City's determination of abatement is AFFIRMED. The City shall take all necessary action to enforce this final determination.

Issued this 26th day of July, 2019.



Kathleen M. O'Neill  
Administrative Law Judge

cc: Diane Rauh - City Clerk

### NOTICE


Any party aggrieved by this determination of the hearing officer may challenge whether the officer exceeded proper jurisdiction or otherwise acted illegally by commencing a certiorari action in the district court for Polk County, Iowa. The petition to initiate a certiorari action must be filed within 30 days after the entry of the final determination unless an extension of time is allowed by the reviewing court pursuant to Division XIV of the Iowa Rules of Civil Procedure.<sup>18</sup>

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<sup>17</sup> *Id.* at § 42-351.

<sup>18</sup> Des Moines Municipal Code § 42-358.02(d)(1).

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City of Des Moines Public Works  
Jason Underwood - Sewer Division  
216 SE 5<sup>th</sup> St  
Des Moines, IA 50309-4820

95-462016



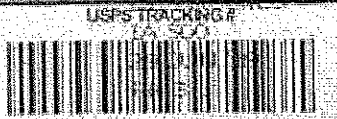
7011 1150 0001 5367 6554

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return this card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> <p>1. Article Addressed to:</p> <p>Robert James 1824 Jefferson Ave Des Moines, IA 50314</p>  <p>9590 9402 1953 6123 0492 07</p> <p>2. Article Number (Domestic Use Only):</p> <p>7011 1150 0001 5367 6554</p>	<p>A. Signature</p> <p>X <i>Robert James</i></p> <p>B. Received by (Printed Name): <i>Robert James</i></p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>E. Agent <input type="checkbox"/> Addressee <input type="checkbox"/></p> <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Mail Restricted Delivery</p> <p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p>Postage \$</p> <p>Insurance Fee \$</p> <p>Other Fees \$</p> <p>Total Postage &amp; Fees \$</p> <p>Postmark Here</p>

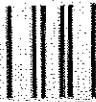
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216 SE 5th St  
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5-482016



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*[Signature]*

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- Addressee

B. Received by (Printed Name)

Robert James

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

- Yes
- No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Postage	Postage & Fees Paid	Postage & Fees Paid	Postage & Fees Paid
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\$0			

Joyce James  
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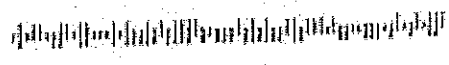
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Robert James  
1824 Jefferson Ave  
Des Moines, IA 50314

9590 9402 1953 6123 0492 07

2. Article Number (Postnet):

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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 Signature  
 Agent  
 Addressee

B. Received by (Printed Name)  
 Robert James

C. Date of Delivery

D. Is delivery address different from form?  Yes  
 No  
 If YES, enter delivery address below:

3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Collection Delivery	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> In Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Mail	
<input type="checkbox"/> Mail Restricted Delivery (over \$500)	

Domestic Return Receipt

Signature of Addressee or Receiver: Robert James  
1824 Jefferson Ave  
Des Moines, IA 50314

Package  
 Certified Mail  
 Return Receipt for Registered Mail (RM-1000)  
 Restricted Delivery Fee (overweight shipping)

Total Charges & Fees  
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216 SE 5<sup>th</sup> St  
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1. Addressee Addressed to:

Joyce James  
1824 Jefferson Ave  
Des Moines, IA 50314



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**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*Robert J. Smith*  
Robert J. Smith

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

**3. Service Type**

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- Insured Mail
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- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery
- Priority Mail Express®
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- Return Receipt for Merchandise
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Send To  
Joyce James  
1824 Jefferson Ave  
Des Moines IA 50314

Postage	\$
Contract Fee	
Return Receipt Fee (Not Recommended)	
Restrictive Delivery Fee (Not Recommended)	
Total Postage & Fees	\$

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