

Date March 23, 2020

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 adding and enacting new Sections 42- 362 and 42-363, and by amending Section 42-457.01, relating to administrative penalties for public nuisance for depositing dirt, debris or other material on public real property and for discharge of collected water on sidewalks, streets and real property",

(Council Communication No. *20-151*)

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 ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

**CERTIFICATE**

I, P. Kay Cmelik, 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 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 adding and enacting new Sections 42- 362 and 42-363, and by amending Section 42-457.01, relating to administrative penalties for public nuisance for depositing dirt, debris or other material on public real property and for discharge of collected water on sidewalks, streets and real property",

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 adding and enacting new Sections 42- 362 and 42-363, and by amending Section 42-457.01, relating to administrative penalties for public nuisance for depositing dirt, debris or other material on public real property and for discharge of collected water on sidewalks, streets and real property, as follows:

**Sec. 42-362. Notice of violations – Administrative penalties and Appeal to Director.**

- (a) If the public works department determines that a violation of Sec. 42-348(25) or Sec. 42-348(26) has been committed, the public works deputy director is authorized to issue a notice of violation imposing an administrative penalty upon any person who commits an act or fails to perform an act causing such nuisance.
- (b) The administrative penalty for such violations shall be as provided in the schedule of administrative penalties adopted by the city council by resolution.
- (c) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to and served upon the violator. Service of the notice may be by regular mail or delivery in person. Penalties shall be paid in full within thirty (30) days of the issuance of the notice.
- (d) Such notice shall include:
  - (1) a statement that the violator has a right to appeal regarding the violation; and
  - (2) a statement that the violator may file a written request for hearing with the public works director or his or her authorized representative. The appeal must be made within 30 days of issuance of the notice and identify the notice of violation appealed from, state the basis for the appeal, and the violator’s name, mailing address, email address, and daytime telephone number. The public works director or his authorized representative will review the appeal on the basis of the record and will notify the violator by mail, telephone or email of the decision as promptly as is reasonably possible. The appeal shall stay payment of the administrative penalty until the appeal is decided. If issuance of the notice of violator is upheld, the violator shall have 30 days from issuance of the appeal decision to pay the administrative penalty.

- (e) Penalties assessed pursuant to notice of violation shall be paid by the violator in full as directed in the notice within thirty (30) days of its issuance. Corrective action as required pursuant to notice of violation shall be completed by the violator as directed in the notice within thirty (30) days of its issuance.
- (f) The administrative penalties set out in the schedule of administrative penalties shall be charged in lieu of the action to abate provided for in sections 42-351, unless the violator refuses to correct the violation and pay the scheduled administrative penalty, or the director determines that immediate prosecution pursuant to abatement, misdemeanor or municipal infraction prosecution pursuant to sections 42-351 and 42-364, in view of the particular circumstances of the case, necessary to achieve compliance with the requirements of this article. The public works department shall maintain a record of all administrative penalties charged or other enforcement actions taken.

**Sec. 42-363. Administrative hearings for administrative penalties.**


Recipients of notice of violation imposing an administrative penalty pursuant to Section 42-362 whose appeal pursuant to Section 42-362(d) is denied by the public works director, or his or her designee, may request an administrative hearing in writing, which is either hand-delivered to the city clerk no later than seven (7) calendar days from the date of the decision, or sent to the city clerk via regular mail postmarked by official U.S. postal service cancellation and not by postage meter no later than seven (7) calendar days from the date of the decision. Such request for hearing shall be made pursuant to Section 42-358.02(b). The conduct of such administrative hearing shall be as set forth in sections 42-358.02(c)(d) and (e). 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. 42-457.01. Administrative hearings.**

Recipients of notice of violation pursuant to this article may request an administrative hearing as set forth in section 42-358.02(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