

★ Roll Call Number

Agenda Item Number

32

Date April 20, 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 amending Sections 42-358 and 42-358.02, relating to notices and administrative hearings for nuisances",

(Council Communication No. 20-158)

presented.

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

FORM APPROVED:

(First of three required readings)

Megan E. Norberg

Megan E. Norberg
Assistant City Attorney

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

MOTION CARRIED

APPROVED

Mayor

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.

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 42-358 and 42-358.02, relating to notices and administrative hearings for nuisances.

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 42-358 and 42-358.02, relating to notices and administrative hearings for nuisances, as follows:

Sec. 42-358. Notices.

- (a) Notice to abate a nuisance shall be given prior to city action to abate a nuisance, except that in the event of an emergency, such notice as is practical under the circumstances, if any is practical, shall be given; provided, however, that nothing herein shall require notice in an emergency if impractical. If notice to abate a nuisance is given pursuant to this article, said notice shall contain the following information:
 - (1) A description, to the extent possible, of the conditions that constitute the nuisance;
 - (2) A description of the location of the nuisance;
 - (3) A statement that any other violations of Chapter 42 Article VI found on the property at the time of a city cleanup will be removed without further notice;
 - (34) A statement that the person liable for the presence of the nuisance must correct the nuisance within the reasonable time set forth in the notice and in accordance with this article; and
 - (45) A statement that upon failure to comply with this article within the time set forth in the notice, the person so notified of the violation shall be deemed liable for the nuisance, and that the city may enter onto the real property and cause the conditions which constitute the nuisance to be abated and assess the costs of abatement against the real property for collection in the same manner as a property tax, following administrative hearing if requested or court action as applicable.
 - (56) If the department elects to follow the administrative hearing procedure set forth in this article, the notice shall also contain a statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for an administrative hearing as set forth in section 42-358.02(b) of this article.
- (b) Notice of costs of abatement shall be given prior to city assessment of such costs. If notice of costs of abatement is given following administrative hearing procedure or emergency action pursuant to this article, said notice shall contain the following information:

- (1) A description, to the extent possible, of the conditions that constituted the nuisance;
- (2) A description of the location of the nuisance;
- (3) A description, to the extent possible, of the abatement actions taken by the city;
- (4) A copy of the invoice or other documentation of costs incurred by the city in abating the nuisance; and
- (5) A statement that upon failure to make full payment as directed in the notice within the time set forth in the notice, the city may assess the costs of abatement against the real property for collection in the same manner as a property tax, following administrative hearing if requested.
- (6) A statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for an administrative hearing on costs of abatement only, as set forth in section 42-358.02(b) of this article.

Sec. 42-358.02. Administrative hearings.

- (a) Recipients of notices pursuant to this article are not entitled to administrative hearings, and administrative hearings shall not be held, if the department elects to solely bring civil action to abate the nuisance and collect costs for abatement rather than to follow the administrative hearing procedure, as stated in the notice.
- (b) Recipients of notices pursuant to this article for which the department elects to follow the administrative hearing procedure, as stated in the notice, may request an administrative hearing as follows:
 - (1) Requests shall be made in writing, and either hand-delivered to the city clerk no later than seven (7) calendar days from the date of the notice, 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 notice.
 - (2) Each request for hearing shall contain the name, address, electronic mail (e-mail) address, and daytime telephone number of any person requesting a hearing and of any attorney and/or agent duly authorized by the person who has received the notice to represent him/her at the hearing.
 - (3) Each request for hearing shall set out the requester's basis for the appeal.
 - (4) Failure to request a hearing within seven (7) calendar days from the date of the notice shall be deemed a waiver of the right to contest the validity of the determination of nuisance and/or determination of costs stated in the notice, as applicable. The information set forth in the notice will be deemed to be valid and abatement and/or assessment of abatement costs will proceed as indicated in the notice.
- (c) All administrative hearings requested in compliance with this section shall proceed as follows:
 - (1) Shall be scheduled by the city clerk to occur as soon as practical following the date of the notice.
 - (2) Shall be held before a hearing officer and be conducted informally. The department and the person in receipt of the notice may be represented by counsel or duly authorized agent, and examine witnesses, and present evidence.

- (3) The person requesting the hearing shall be notified in writing by regular mail or by electronic mail (e-mail), or by phone of the date and time for the hearing at least three (3) business days in advance thereof.
 - (4) For hearings following notice to abate a nuisance, the hearing officer shall either find that a nuisance exists, or void or reverse the notice. If the hearing officer finds that a nuisance exists and evidence of plans for abatement are presented at the hearing by the recipient of the notice, the hearing officer may grant additional reasonable time for the abatement of the nuisance by the recipient of the notice prior to city abatement of the nuisance.
 - (5) For hearings following notice of costs of abatement, the hearing officer shall either uphold the amount billed, reduce the amount billed, or waive the costs, and 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. 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.
 - (6) If an owner(s) or their representative fails to appear at the hearing, they shall be considered to be in default and the requested relief shall not be granted.
- (d) The determination of the hearing officer shall be in writing, including findings of fact, and is the final administrative decision of the city.
- (1) Any party aggrieved by the determination of the hearing officer pursuant to this article 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 thirty (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. The city manager is hereby authorized to initiate a certiorari on behalf of the city when the city manager, in consultation with the city attorney, deems it necessary and appropriate.
 - (2) The filing of an action in the district court challenging the determination of the hearing officer does not automatically stop the city from taking action pursuant to such determination. Unless the city has been served with an order from the district court directing otherwise, the city may proceed with enforcement of a determination.
- (e) Request for an administrative hearing does not stay an action by the city for alternative relief as allowed by law.

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

FORM APPROVED:



Megan E. Norberg
Assistant City Attorney

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 42-358 and 42-358.02, relating to notices and administrative hearings for nuisances.

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Sec. 42-358. Notices.

- (a) Notice to abate a nuisance shall be given prior to city action to abate a nuisance, except that in the event of an emergency, such notice as is practical under the circumstances, if any is practical, shall be given; provided, however, that nothing herein shall require notice in an emergency if impractical. If notice to abate a nuisance is given pursuant to this article, said notice shall contain the following information:
- (1) A description, to the extent possible, of the conditions that constitute the nuisance;
 - (2) A description of the location of the nuisance;
 - (3) A statement that any other violations of Chapter 42 Article VI found on the property at the time of a city cleanup will be removed without further notice;
 - (4) A statement that the person liable for the presence of the nuisance must correct the nuisance within the reasonable time set forth in the notice and in accordance with this article; and
 - (5) A statement that upon failure to comply with this article within the time set forth in the notice, the person so notified of the violation shall be deemed liable for the nuisance, and that the city may enter onto the real property and cause the conditions which constitute the nuisance to be abated and assess the costs of abatement against the real property for collection in the same manner as a property tax, following administrative hearing if requested or court action as applicable.
 - (6) If the department elects to follow the administrative hearing procedure set forth in this article, the notice shall also contain a statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for an administrative hearing as set forth in section 42-358.02(b) of this article.
- (b) Notice of costs of abatement shall be given prior to city assessment of such costs. If notice of costs of abatement is given following administrative hearing procedure or emergency action pursuant to this article, said notice shall contain the following information:

- (1) A description, to the extent possible, of the conditions that constituted the nuisance;
- (2) A description of the location of the nuisance;
- (3) A description, to the extent possible, of the abatement actions taken by the city;
- (4) A copy of the invoice or other documentation of costs incurred by the city in abating the nuisance; and
- (5) A statement that upon failure to make full payment as directed in the notice within the time set forth in the notice, the city may assess the costs of abatement against the real property for collection in the same manner as a property tax, following administrative hearing if requested.
- (6) A statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for an administrative hearing on costs of abatement only, as set forth in section 42-358.02(b) of this article.


Sec. 42-358.02. Administrative hearings.

- (a) Recipients of notices pursuant to this article are not entitled to administrative hearings, and administrative hearings shall not be held, if the department elects to solely bring civil action to abate the nuisance and collect costs for abatement rather than to follow the administrative hearing procedure, as stated in the notice.
- (b) Recipients of notices pursuant to this article for which the department elects to follow the administrative hearing procedure, as stated in the notice, may request an administrative hearing as follows:
 - (1) Requests shall be made in writing, and either hand-delivered to the city clerk no later than seven (7) calendar days from the date of the notice, 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 notice.
 - (2) Each request for hearing shall contain the name, address, electronic mail (e-mail) address, and daytime telephone number of any person requesting a hearing and of any attorney and/or agent duly authorized by the person who has received the notice to represent him/her at the hearing.
 - (3) Each request for hearing shall set out the requester's basis for the appeal.
 - (4) Failure to request a hearing within seven (7) calendar days from the date of the notice shall be deemed a waiver of the right to contest the validity of the determination of nuisance and/or determination of costs stated in the notice, as applicable. The information set forth in the notice will be deemed to be valid and abatement and/or assessment of abatement costs will proceed as indicated in the notice.
- (c) All administrative hearings requested in compliance with this section shall proceed as follows:
 - (1) Shall be scheduled by the city clerk to occur as soon as practical following the date of the notice.
 - (2) Shall be held before a hearing officer and be conducted informally. The department and the person in receipt of the notice may be represented by counsel or duly authorized agent, and examine witnesses, and present evidence.

- (3) The person requesting the hearing shall be notified in writing by regular mail or by electronic mail (e-mail), or by phone of the date and time for the hearing at least three (3) business days in advance thereof.
 - (4) For hearings following notice to abate a nuisance, the hearing officer shall either find that a nuisance exists, or void or reverse the notice. If the hearing officer finds that a nuisance exists and evidence of plans for abatement are presented at the hearing by the recipient of the notice, the hearing officer may grant additional reasonable time for the abatement of the nuisance by the recipient of the notice prior to city abatement of the nuisance.
 - (5) For hearings following notice of costs of abatement, the hearing officer shall either uphold the amount billed, reduce the amount billed, or waive the costs, and 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. 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.
 - (6) If an owner(s) or their representative fails to appear at the hearing, they shall be considered to be in default and the requested relief shall not be granted.
- (d) The determination of the hearing officer shall be in writing, including findings of fact, and is the final administrative decision of the city.
- (1) Any party aggrieved by the determination of the hearing officer pursuant to this article 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 thirty (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. The city manager is hereby authorized to initiate a certiorari on behalf of the city when the city manager, in consultation with the city attorney, deems it necessary and appropriate.
 - (2) The filing of an action in the district court challenging the determination of the hearing officer does not automatically stop the city from taking action pursuant to such determination. Unless the city has been served with an order from the district court directing otherwise, the city may proceed with enforcement of a determination.
- (e) Request for an administrative hearing does not stay an action by the city for alternative relief as allowed by law.

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 Megan E. Norberg
 Assistant City Attorney