



Roll Call Number

Agenda Item Number

64

Date April 15, 2024

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, is hereby amended, by amending Sections 3-1, 3-2, 3-11, 3-16, 3-17, 3-22, 3-26, 3-27, 3-28, and repealing Section 3-29, relating to administrative appeals and income setoff procedures",

presented.

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

FORM APPROVED:

(First of three required readings)

/s/ Gary D. Goudelock Jr.
Gary D. Goudelock Jr.
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
SIMONSON				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				
MOTION CARRIED	APPROVED			

CERTIFICATE

I, LAURA BAUMGARTNER, 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.

Mayor

City Clerk

64

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 3-1, 3-2, 3-11, 3-16, 3-17, 3-22, 3-26, 3-27, 3-28, and repealing Section 3-29, relating to administrative appeals and income setoff procedures.

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, heretofore amended, is hereby amended, by amending Sections 3-1, 3-2, 3-11, 3-16, 3-17, 3-22, 3-26, 3-27, 3-28, and repealing Section 3-29, as follows:

Sec. 3-1. Statement of purpose.

This chapter is intended to establish fair, consistent and uniform procedures for the use of an administrative hearing officer to hear and determine appeals from decisions made by city ~~officers~~ employees, agents, or representatives in the performance of their official duties.

Sec. 3-2. Definitions.

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

Administrative hearing officer means the person or persons appointed by the city manager pursuant to section 3-3.

Appealable decision means a decision made by a city ~~officer~~ employee, agent, or representative in the performance of ~~the officer's~~ that person's official duties that is specifically allowed by this Code to be appealed to the administrative hearing officer in accordance with the procedures set forth in this chapter. A decision shall be considered to have been made on the date it is memorialized in writing, provided such written decision is promptly served upon the affected parties by personal service or by regular mail addressed to their business address or place of residence.

Appellant means one or more persons who have filed an appeal pursuant to this chapter.

Affected department means the city department which employs the city ~~officer~~ employee, agent, or representative who made the decision appealed from in an administrative appeal proceedings.

City clerk means the city clerk or the city clerk's designee.

Days after or *days before* when used in the computation of the time between a triggering event and some required action shall be calculated by not counting the day of the triggering event and by counting each day before or after the triggering event, as appropriate until and including the date the required action is taken.

Sec. 3-11. Scope.

This division shall apply to only those appeals from a decision made by a city ~~officer-employee, agent, or representative~~ where the substantive provisions of this Code applicable to such decision specifically authorize an appeal pursuant to this chapter. This division does not alter the established procedures for appealing decisions made by city ~~officersemployees, agents, or representatives~~, except to the extent this code has been amended to specifically replace such established procedures with the procedures set forth in this chapter.

Sec. 3-16. Initiating administrative appeal

- (a) No decision by a city ~~officer-employee, agent, or representative~~ in the performance of their official duties shall be appealable to the administrative hearing officer in accordance with this chapter unless the right to an administrative appeal in conformance with this chapter is specifically granted by this Code.
- (b) *Filing deadline.* When the right to an administrative appeal in conformance with this chapter is specifically granted by this Code from a decision made by a city ~~employee, agent, or representative~~~~officer~~ in the performance of their official duties, the appeal must be initiated by timely filing a written notice of appeal with the city clerk. Except as allowed in paragraphs c and d, the notice of appeal must be filed within 10 business days after the date of the decision appealed from. Failure to timely file a written notice of appeal shall constitute a waiver of the right to appeal the decision.
- (c) *Exceptions.* The notice of appeal from a decision made by a city ~~official-employee, agent, or representative~~ pursuant to the Code sections listed below shall be filed within the times allowed below.
 - (1) *Section 18-59. Declaration that a dog is vicious.*
Section 18-199. Declaration that an animal is an illegal animal.
Section 18-202. Declaration that an animal is a dangerous animal.
The declaration must be appealed by filing a written notice of appeal with the city clerk within three business days of service of the declaration.
 - (2) *(reserved)*
- (d) *Late filed notice.* For good cause shown to the reasonable satisfaction of the city clerk, a notice of appeal may be filed after the deadlines established in paragraphs b and c, above, provided the notice of appeal is late filed within 5 business days after the appellant knew, or in the exercise of reasonable diligence should have known, of the issuance of the decision appealed from.
- (e) *Date of filing.* The notice of appeal shall be considered filed when received by the office of the city clerk at city hall. However, a notice of appeal delivered by U.S. mail or overnight courier shall be considered to have been timely filed if the postmark date is within the time allowed to file the appeal.
- (f) *Contents.* The notice of appeal shall contain the following information:
 - (1) The name and address of the appellant.
 - (2) Contact information for the appellant, including phone number, mailing address and, if available, an e-mail address to which all further notices may be served.

- (3) The name, phone number and mailing address of any attorney or other person authorized to represent the appellant in the appeal proceedings and to receive the notice of the hearing.
- (4) The nature of the decision appealed from, including the case or file number if available.
- (5) The name and/or office of the person who made the decision, if known.
- (g) *Filing fee.* A notice of appeal shall not be considered filed until the appellant has paid an application fee in the amount set in the schedule of fees adopted by the city council by resolution. The filing fee shall be subject to refund under the circumstances set forth in section 3-24.

Sec. 3-17. Scheduling and notice of hearing.

- (a) Upon receipt of a notice of appeal the city clerk shall promptly notify the affected department. The affected department shall be responsible for investigating the nature and merit of the appeal; and shall promptly contact the city clerk to schedule a date and time for consideration of the appeal by an administrative hearing officer. The city clerk shall maintain the schedule of administrative hearings.
- (b) *Timing of hearing.* A hearing shall be scheduled for consideration of the appeal by an administrative hearing officer as promptly as reasonably possible.
- (c) *Service of notice of hearing.* Except as provided in paragraph d, the city clerk shall cause notice of hearing on an appeal to be served on the designated representative of the appellant, or on the appellant if no representative has been designated, in one of the following ways:
 - (1) By regular mail postmarked at least seven business days prior to the hearing and addressed to the address provided in the notice of appeal.
 - (2) By personal service at least five business days prior to the hearing.
- (d) *Exceptions.* The notice of hearing on an appeal from a decision made by a city employee, agent, or representative official pursuant to the Code sections listed below shall be served in the manner provided below:
 - (1) *§18-59. Declaration that a dog is vicious.*
§18-199. Seizure, impoundment and disposition of illegal animals.
§18-202. Seizure, impoundment and disposition of dangerous animals.
 The notice shall be served by the chief humane officer on the designated representative of the appellant, or on the appellant if no representative has been designated, in one of the following ways at least 72 hours prior to the scheduled time of the hearing:
 - (i) By personal service.
 - (ii) By service upon any adult at the address provided in the notice of appeal, or by posting on those premises if no adult is present to accept service.
 - (iii) If service cannot be timely made pursuant to (i) or (ii) above within the city boundaries, then by service upon any adult residing at the premises where the animal has been regularly kept or by posting on those premises if no adult is present to accept service, and by calling the telephone number provided for the designated representative of the appellant, or the appellant if no representative has been designated, and leaving a message with anyone

who answers or any answering machine identifying the appeal, and the scheduled date, time and place of the hearing on the appeal.

- (2) *(reserved)*
- (e) *Notice.* The notice of hearing shall identify the date, time and place of the hearing, and shall give notice that default judgment may be entered upholding the decision being appealed if the appellant fails to timely appear at the hearing, either in person or by an authorized representative.
- (f) *Withdrawal of decision.* In the event the affected department elects to withdraw a decision which is the subject of a pending appeal, the affected department shall promptly notify the appellant and city clerk of the withdrawal of the decision. Upon receipt of such notice the city clerk shall refund the filing fee collected pursuant to section 3-16(g) through the normal procurement process.

Sec. 3-22. Burden of proof.

An appealable decision which has been memorialized in writing and signed by a city ~~officer~~ employee, agent, or representative shall be prima facie evidence of the correctness of the facts specified therein. Except as provided in section 3-23, no appealable decision shall be reversed or amended except upon proof by a preponderance of the evidence that such decision is contrary to the law or this code, or is unsupported by the facts.

Division 4. Des Moines Debt ~~Offset~~ Setoff Program

Sec. 3-26. Statement of Purpose.

This division provides procedures to follow in the event that the city seeks to collect debts owed to the city by placement of such debts in the state program established by state law and subject to a Memorandum of Understanding between the Iowa Department of ~~Administrative Services~~ Revenue and the city to offset debts owed to the city against debts owed by the state to the debtor.

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

- (a) A department director or ~~his or her~~ their designee shall make a good faith effort to collect a 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~~ setoff 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~~ setoff program is timely filed, the finance director or ~~his or her~~ their designee(s) 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~~ their 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~~Setoff.

After notification and completion of any informal challenge to placement, the finance director or his or her ~~their~~ designee shall ~~notify~~ submit the debt to the Department of Revenue ~~the state of the existence of the debt pursuant to the Department of Revenue's requirements, of 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. ~~Repealed by Ord. No. --,---~~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.~~

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

FORM APPROVED:

/s/ Gary D. Goudeock Jr.
Gary D. Goudeock Jr.
Assistant City Attorney