



Roll Call Number

Agenda Item Number

5

Date July 22, 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 102-8, 102-615 and 3-23, relating to abandoned property and the removal of encroachments",

presented.

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

FORM APPROVED:

(First of three required readings)

/s/ Lisa A. Wieland
Lisa A. Wieland
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

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, is hereby amended by amending Sections 102-8, 102-615 and 3-23, relating to abandoned property and the removal of encroachments.

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 102-8, 102-615 and 3-23, as follows:

Sec. 102-8. Disposition of abandoned property.

If any abandoned property as referred to in sections 102-5, 102-6 and 102-7 of this article has been or is kept for 90-30 days or more without being claimed, it may be disposed of by the city manager or his or her authorized representative. If the city manager elects to sell the property, it may be sold ten days after notice of the proposed sale has been given by one publication in any newspaper published in the city. The city may be a bidder at the sale. If at any such sale an amount is bid in excess of the charges or lien of the city, the excess shall be used at the discretion of the city manager.

Sec. 102-615. Removal.

- (a) License. Whenever the city engineer has revoked a license required under this article or the license has expired, the owner or user of the subject encroachment shall cause it to be removed immediately from the public property.
- (b) Three Day Notice. Whenever a department finds any encroachment constructed, used or maintained without the required license having been secured or maintained in effect, the director of that department may, as an alternative to any other remedy allowed by this Code, order the removal of the encroachment by giving written notice of such order by certified mail to the address of the owner or user of the encroachment, if known, or, if such address is not known, he or she may post such notice on or next to the encroachment. The notice shall state the name, address and telephone number of the department director; the location and a description of the encroachment; that the encroachment is in violation of the requirements of this article; that the owner or user is ordered to cause immediate removal of the encroachment from the public property; that the encroachment may be removed and stored, as applicable, by the city after for a period of time in accordance with city policy, but not less than 30 days after the -a date of removal designated in the notice, which date of removal shall be no less than ten-three days after the date the notice was mailed or first posted, as the case may be; ~~and that the owner or user may appeal the order pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within ten days after the date the notice containing the order~~

~~was mailed or first posted. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest the order.~~ If such notice is given and the encroachment is still on public property after the date specified in the notice ~~or if an appeal is made and denied or withdrawn,~~ the department director may cause removal and storage, as applicable, of the encroachment for a period of time no less than 30 days in accordance with city policy.

- (c) Removal Without Notice. As an alternative to any other remedy allowed by this Code and notwithstanding any other section of this article, a department director may cause immediate removal and storage, as applicable, for a period of time no less than 30 days from the date of removal in accordance with city policy, of any encroachment on public property where its construction, use or maintenance unreasonably endangers the safety of persons or property or unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic. Any person aggrieved by the removal of an encroachment pursuant to this section may appeal the city's decision to remove ~~and store the encroachment, as applicable,~~ pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within 30 days commencing on the date of the city's removal of the encroachment. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest the city's decision to remove and store, as applicable, the encroachment.
- (d) Pre-Removal Hearing. ~~Following the service of a notice under subsection (b) above, the owner or user of the encroachment may appeal the city's decision to remove the encroachment~~ pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within ~~ten 3~~ 3 days ~~from after~~ the date ~~such encroachment was of the notice to~~ removed. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest the ~~removal~~ city's decision to remove the encroachment. ~~If the administrative hearing officer's authority in a pre-removal appeal hearing determines that the city improperly caused removal of an encroachment, the matter shall be referred to the city manager and city decision attorney to recommend an appropriate remedy to the city council remove the encroachment from its present location.~~
- (e) Post-Removal Hearing. The owner or user of the encroachment may appeal the city's decision under subsection (b) or (c) to retain and store the property or for property damage, loss, or disposal, of the encroachment pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within 30 days commencing on the date of the city's removal of the encroachment. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest to appeal such decision. The administrative hearing officer's authority on appeal shall be limited to ordering personal property that is stored by the city to be provided to the appellant.

Sec. 3-23. Limitations on hearings.

The hearing on an appeal from a decision made by a city official pursuant to the Code sections listed below shall be subject to the following restrictions and limitations:

- (1) *Section 114-485.15. Impoundment of a vehicle.*

The sole issue before the administrative hearing officer shall be whether there was probable cause as defined in section 114-485.17 to impound the vehicle and personal property contained within the vehicle in question. The department causing the vehicle to be impounded shall carry the burden of establishing that there was probable cause to impound the vehicle in question. The administrative hearing officer shall decide only that either (i) there was probable cause to impound the vehicle and contents, or (ii) there was no probable cause to impound the vehicle and contents.

~~(2) — Section 102-615. Removal of encroachments.~~

~~The sole issue before the administrative hearing officer shall be whether the removal of the encroachment by the city was properly authorized pursuant to Article VIII of Chapter 102 of this Code. If it is determined that the removal was not properly authorized pursuant to Article VIII of Chapter 102 of this Code, or if the appellant alleges that the removed property was improperly disposed of by the city, the administrative hearing officer shall refer the matter to the city attorney for further consideration and processing as a claim against the city.~~

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/ Lisa A. Wieland
Lisa A. Wieland
Assistant City Attorney