

ORDINANCE NO. 1598

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to General Provisions, amending DMMC 1.24.190, 1.28.040, and 1.28.050.

WHEREAS, during the process of amending Titles 12, 13, 14, 16, 17, and 18, additional chapters of the DMMC were found to need updating to correspond to the recent amendments, and

WHEREAS, the monetary penalties adopted in DMMC 1.24.190 need to be amended to create a uniform classification for civil infractions, and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety, and general welfare to establish comprehensive, uniform, and current provisions for Title 1 DMMC; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 1.24.190 and section 19 of Ordinance No. 1009 as amended by section 1 of Ordinance No. 1325 as amended by section 1 of Ordinance No. 1402 as amended by section 1 of Ordinance No. 1505 are each amended to read as follows:

Monetary penalties - Amounts. Unless specifically stated elsewhere in the DMMC, the violation or failure to comply with any provision of the DMMC is a Class 1 civil infraction. A person found to have committed a civil infraction is assessed a monetary penalty:

(1) The maximum penalty and the default amount for a Class 1 civil infraction is \$250.00, not including statutory assessments;

(2) The maximum penalty and the default amount for a Class 2 civil infraction is \$125.00, not including statutory assessments;

(3) The maximum penalty and the default amount for a Class 3 civil infraction is \$50.00, not including statutory assessments;

(4) The maximum penalty and the default amount for a Class 4 civil infraction is \$25.00, not including statutory assessments;

(5) The maximum penalty and the default amount for a Class 5 civil infraction is \$25.00, not including statutory assessments; and

(6) The maximum penalty and the default amount for a Class 6 civil infraction is \$25.00, not including statutory assessments.

Sec. 2. DMMC 1.28.040 and section 4 of Ordinance No. 1236 as amended by section 3 of Ordinance No. 1321 are amended to read as follows:

Notice of civil violation.

(1) Issuance. When the City Manager or designee determines that a violation has occurred or is occurring, the City Manager or the City Manager's designee may issue a notice of civil violation without having attempted to secure voluntary correction as provided in DMMC 1.28.030 under the following circumstances:

(a) When an emergency exists; or

(b) When a repeat violation occurs; or

(c) When the violation creates a situation or condition which cannot be corrected; or

(d) When the person knows or reasonably should have known that the action is in violation of a City regulation.

(2) Content. The notice of civil violation shall include the following:

(a) The name and address of the person responsible for that violation; and

(b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

(c) A description of the violation and a reference to the provision(s) of the City regulation which has been violated; and

(d) The required corrective action and a date and time by which the correction must be completed after which the City may abate the unlawful condition in accordance with this chapter or other applicable law; and

(e) The date, time and location by which an affected party may file an appeal before the Hearing Examiner; and

(f) A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the city manager or designee approves the completed, required corrective action at least 48 hours prior to the hearing, except that this statement need not be included where the violation constitutes a repeat violation or the violation creates a situation or condition which cannot be corrected; and

(g) A statement that the costs and expenses of abatement incurred by the city pursuant to this chapter and a monetary penalty in an amount

per day for each violation as specified in this chapter may be assessed against the person to whom the notice of civil violation is directed.

(3) Service of notice. The City Manager or the City Manager's designee shall serve the notice of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within King County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by mail.

(4) Extension. No extension of the time specified in the notice of civil violation for correction of the violation may be granted, except by order of the hearing examiner, or by written agreement of the City Manager or the City Manager's designee and the person responsible for the violation.

(5) Monetary penalty. The monetary penalty for each violation per day or portion thereof shall be as follows:

- (a) First day of each violation,
\$100.00;
- (b) Second day of each violation,
\$200.00;
- (c) Third day of each violation,
\$300.00;
- (d) Fourth day of each violation,
\$400.00;
- (e) Each additional day of each
violation beyond four days, \$500.00 per day.

(6) Continued duty to correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

(7) Collection of monetary penalty.

(a) The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city within 10 calendar days from the date of service of the notice of violation. Service by mail shall be deemed complete upon the third day following the day upon which notice is placed in the mail, unless the third day falls on a Saturday, Sunday, or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day.

(b) The City Attorney is authorized to take appropriate action to collect the monetary penalty.

Sec. 3. DMMC 1.28.050 and section 5 of Ordinance No. 1236 as amended by section 4 of Ordinance No. 1321 are amended to read as follows:

Hearing before the Hearing Examiner.

(1) Notice. A person to whom a notice of civil violation is issued may appeal such notice to the Hearing Examiner within 10 calendar days after the notice of civil violation is issued.

(2) Prior correction of violation. Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the City Manager or designee approves the completed required corrective action at least 48 hours prior to the scheduled hearing or agrees to extend the time for correction of the violation as provided in DMMC 1.28.040.

(3) Procedure. The Hearing Examiner shall conduct a hearing on the civil violation pursuant to the Des Moines Hearing Examiner Code, chapter 18.240 DMMC. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

(4) Decision of the Hearing Examiner.

(a) The Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

(b) The Hearing Examiner shall issue an order to the person responsible for the violation which contains the following information:

(i) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(ii) The required corrective action;

(iii) The date and time by which the correction must be completed;

(iv) The monetary penalties assessed based on the provisions of this chapter;

(v) The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

(c) Assessment of Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in DMMC 1.28.040(5).

(i) The Hearing Examiner shall have the following options in assessing monetary penalties:

(A) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

(B) Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; or

(C) Assess no monetary penalties.

(ii) In determining the monetary penalty assessment, the Hearing Examiner shall consider the following factors:

(A) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;

(B) Whether the person failed to appear at the hearing;

(C) Whether the violation was a repeat violation;

(D) Whether the person showed due diligence or substantial progress in correcting the violation;

(E) Whether a genuine code interpretation issue exists; and

(F) Any other relevant factors.

(iii) The Hearing Examiner may double the monetary penalty schedule if the violation was a repeat violation.

(d) Notice of decision. The Hearing Examiner shall mail a copy of the decision to the appellant and to the applicable department director within 15 working days of the hearing.

(5) Failure to appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the Hearing Examiner may enter an order finding that the violation occurred and assessing the appropriate monetary penalty. The City will carry out the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

(6) Monetary penalty. The monetary penalty for a violation does not accrue pending the appeal; however, the hearing examiner may impose a daily monetary penalty from the date of service of the notice of civil violation if the Hearing Examiner finds that the appeal is frivolous or intended solely to delay compliance.

(7) Appeal to Superior Court - Land use decision. Judicial review of a land use decision, as defined in RCW 36.70C.020, made by the Hearing Examiner must be made pursuant to the provisions of the Land Use Petition Act, chapter 36.70C RCW.

Sec. 4. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Sec. 5. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law

PASSED BY the City Council of the City of Des Moines this 8th day of May, 2014 and signed in authentication thereof this 8th day of May, 2014.


MAYOR

APPROVED AS TO FORM:


Assistant City Attorney

ATTEST:


City Clerk

Published: May 13, 2014

Effective Date: June 7, 2014

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1598, Adopted May 8, 2014.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to General Provisions, amends DMMC 1.24.190, 1.28.040, and 1.28.050.

The full text of the Ordinance will be mailed without cost upon request.

Bonnie Wilkins
City Clerk

Published: May 13, 2014