

MEMO

Legal Department

To: Mayor Campbell and Members of the Ames City Council

From: Mark O. Lambert, Assistant City Attorney

Date: February 19, 2016

Subject: Item No. 17: Staff Report on Research re: Ordinances in Iowa Regulating Protesting

The Ames City Council directed the City Attorney's office to investigate other Iowa cities' ordinances addressing protestors.

In most cities, there is very little -- and often no -- express regulation of protestors. Several cities noted in discussion that they had no specific ordinance regarding protesting, but that protestors who otherwise break laws can be arrested and prosecuted for transgressions listed in specific city ordinances (such as disorderly conduct, obstructing the sidewalks, making threats, etc.).

The Ames City Attorney's office reached out to other cities in Iowa by e-mail. We received responses from many of the larger cities in Iowa (Iowa City, Council Bluffs, Des Moines, Sioux City, Muscatine, Cedar Rapids) and a handful of medium-to-smaller sized cities: Bettendorf, Ottumwa, Greenfield, Fontanelle, Fort Madison, Marion, Colo. Additionally, staff reviewed on-line the municipal ordinances of other cities that did not respond, such as Davenport, Dubuque and Newton.

There were effectively only two cities that had any sort of ordinance regulating protestors: Iowa City and Fort Madison.

Iowa City. The City of Iowa City has an ordinance regulating picketing. (*Iowa City Municipal Code section 10-2*). The ordinance defines terms (such as "picketing," and "picketer," etc.) and then says that picketers shall use city sidewalks for picketing, shall not obstruct free passage of any pedestrian, bicycle or vehicular traffic, or interfere with the ingress/egress of any business. The ordinance states that anyone seeking to picket in places other than the sidewalk must

obtain a parade/public assembly permit, per another ordinance. The ordinance then prohibits picketing in residential areas, with a few exceptions (such as when a home is used as a business). The ordinance also explicitly grants the police authority to disperse persons who are picketing when such picketing is in violation of the ordinance or otherwise poses a threat to public health, safety, or the orderly flow of traffic, and makes it unlawful for any person to refuse to disperse when so directed by a police officer.

Fort Madison. The City of Fort Madison seems to be the only city in Iowa with a comprehensive ordinance regulating picketing/demonstrating (*Fort Madison Municipal Code section 7-9*). In summary, here are the key points of the ordinance: first, it defines terms such as “demonstrations,” “parade,” “picket line,” etc. The ordinance establishes parade permits, and then goes on to directly regulate “picketing.” The ordinance states that picketing can only be conducted on the sidewalk, not on the street. It limits the number of picketers promoting the same objective to ten at a time within a single block. The signs held by picketers/demonstrators are limited in size to two feet by two feet. Picketers must march in single file and not abreast and not closer together than fifteen feet, except in passing each other. Picketers/demonstrators must remain within five feet of the curb and be in continuous motion. If picketers/demonstrators promoting different objectives are both present, and result in more than ten persons, the police shall allot time to each group on an equitable basis. This ordinance seems more inclined toward labor-dispute picketing, or gatherings of large groups of picketers on differing sides of an issue.

The First Amendment to the United States Constitution provides for freedom of speech and the right to peaceably assemble. The First Amendment concerns are likely the reason very few cities regulate picketing/protesting/demonstrating. Generally, government can put reasonable “time, place, and manner” restrictions on speech. Legal staff questions whether some of the limitations in the Fort Madison ordinance would survive a constitutional challenge.

Attachments: Iowa City ordinance
Fort Madison ordinance

IOWA CITY

Chapter 2 PICKETING

10-2-1: DEFINITIONS:

As used in this chapter, the following definitions shall apply:

PICKETER: A person who engages in picketing with or without signs or placards.

PICKETING: The practice of standing, marching, congregating, protesting, demonstrating, or patrolling by one or more persons for the purpose of persuading, discussing, educating, advocating, or informing another person or persons or for the purpose of protesting some action, attitude, policy, or belief. It does not include social, random, or other everyday communication.

PRIVATE RESIDENCE: A single-family, duplex, or multi-family dwelling.

PUBLIC RIGHT OF WAY: The area on or below a public roadway, highway, street, bicycle lane, alley, and public sidewalk which is designed for vehicular, bicycle or pedestrian travel and dedicated to public use, including "city plaza" as defined in chapter 5 of this title.

PUBLIC SIDEWALK: The improved portion of public right of way dedicated to and/or intended primarily for pedestrian use.

RESIDENTIAL PICKETING: Picketing that is directed, focused, or targeted at a particular private residence and that takes place directly in front of the particular private residence or the private residences on either side of the targeted private residence.

RESIDENTIAL ZONE: All zones defined in title 14, chapter 2, articles A and B of this code. (Ord. 04-4125, 5-4-2004)

10-2-2: USE OF SIDEWALKS FOR PICKETING:

A. No Picketing Except By Permit: No picketing except as authorized by a parade/public assembly permit issued under chapter 1 of this title, shall be conducted on that portion of the streets used primarily for vehicular or bicycle traffic.

B. Interference With Traffic, Businesses And Public Facilities: Picketers shall not block or obstruct free passage of any pedestrian, vehicular traffic, or bicycle traffic or interfere with ingress or egress to any business or public facility. (Ord. 04-4125, 5-4-2004)

10-2-3: RESIDENTIAL PICKETING:

A. It shall be unlawful for any person to engage in residential picketing.

B. Nothing herein shall prohibit: 1) the residential picketing of a residence which is used as the occupant's sole place of business; 2) the residential picketing of a private residence used as a public meeting place; 3) a person or group of persons from marching without stopping at a particular private residence; or 4) a person or group of persons from marching on a defined route without stopping at any particular private residence.

C. Before a person may be cited for violation of this provision, the person must have been ordered to move, disperse, or otherwise remedy the violation by either a police officer or a person with authority to control the use of the private residence which is the focus or target of the residential picketing. (Ord. 04-4125, 5-4-2004)

10-2-4: ADVANCED NOTICE OF PROPOSED PICKETING, PROTESTING OR DEMONSTRATING:

(Rep. by Ord. 04-4125, 5-4-2004)

10-2-5: DUTY TO DISPERSE AS DIRECTED BY POLICE:

A. Police officers are authorized to disperse persons who are picketing whenever such picketing is in violation of this chapter and poses a threat to public health, safety or orderly flow of traffic¹.

B. It shall be unlawful for any person to refuse to disperse or move on when so directed by a police officer as herein provided. (Ord. 04-4125, 5-4-2004)

10-2-6: OBSTRUCTION OF PUBLIC WAYS:

(Rep. by Ord. 04-4125, 5-4-2004)

10-2-7: PENALTIES:

Any violation of this chapter shall be considered a simple misdemeanor or municipal infraction as provided for in title 1, chapter 4 of this code. (1994 Code)

Footnote 1: See also subsection 6-1-2M2 of this code.

CHAPTER 9

PARADES, PICKET LINES, AND DEMONSTRATIONS

SECTION:

- 7-9-1: Definitions
- 7-9-2: Permits And Notifications
- 7-9-3: Parade Permits, Issuance
- 7-9-4: Revocation Of Permit
- 7-9-5: Certain Activities Prohibited
- 7-9-6: Interference With Parade
- 7-9-7: Additional Regulations
Applicable To Picketing And
Demonstrations
- 7-9-8: Exceptions

making known any position or promotion of such person or persons, or of or on behalf of any organization or class of persons. (1993 Code; amd. Ord. C-475, 8-19-2008)

7-9-2: **PERMITS AND NOTIFICATIONS:** It shall be unlawful for any person or persons to organize, conduct or participate in any parade in or upon any street, sidewalk, alley or other public place within the city unless a permit therefor has been issued by the city in accordance with the provisions of this chapter. Any person or persons responsible for organizing a picket line or demonstration shall, no later than the beginning of this activity, notify the chief of police of this activity in order that appropriate measures may be taken to protect public order and safety. (Ord. C-475, 8-19-2008)

7-9-1: **DEFINITIONS:** For the purpose of this chapter, the following terms shall have the definitions ascribed:

BLOCK: That portion of any street lying between its intersection with other streets.

DEMONSTRATIONS: Any person, or persons, acting alone or together for the purpose of protesting any matter or of making known any position or promotion of such person or persons, or of or on behalf of any organization or class of persons, or for the purpose of attracting attention to such assembly.

7-9-3: **PARADE PERMITS, ISSUANCE:**
The chief of police or his designee is authorized to issue permits as required in the preceding section, and in the issuance thereof shall:

PARADE: Any person or persons participating in or operating any vehicle in any march, ceremony, show, exhibition or procession of any kind in or upon the public streets, sidewalks, alleys, parks or other public grounds or places.

- A. Require a written application for permit to be filed not less than seventy two (72) hours in advance of such parade.
- B. Refuse to issue such permit for a parade to commence before six o'clock (6:00) A.M. or terminate after six o'clock (6:00) P.M.

PICKET LINE: Any person or persons acting alone or together for the purpose of

- C. Require that the application for a permit specify whether or not minors below the age of eighteen (18) years will be permitted to participate. (1993 Code)
- D. Require that the application for a permit shall specify and the permit shall designate the name and address of the person or persons in charge of the activity. Such person shall be required to accompany the parade and shall carry such permit with him or her at that time. Such permit shall not be valid in the possession of any other person. (Ord. C-475, 8-19-2008)

7-9-4: REVOCATION OF PERMIT:

The chief of police shall revoke any permit granted for any of the following causes:

- A. The violation by any participant of section 7-9-5 of this chapter.
- B. The failure to comply with the terms and conditions of the permit. (Ord. C-475, 8-19-2008)

7-9-5: CERTAIN ACTIVITIES PROHIBITED:

The following acts or activities, when performed or undertaken in conjunction with or as a part of any parade, picket line, or demonstration, are hereby prohibited and declared unlawful: (1993 Code; amd. Ord. C-475, 8-19-2008)

- A. The carrying on or about the person any firearm, or any weapon or article, including, but not limited to, black-jacks, nightsticks or flashlights, which by their use might constitute a dangerous or deadly weapon. (Ord. C-475, 8-19-2008)

- B. The taking or keeping of any vicious animal, whether leashed or unleashed. (1993 Code)
- C. The obstruction of public streets, sidewalks, alleys, parks or other public grounds or places, without specific permission from an authorized public official.
- D. The disruption, or interference, of the public's use of the following facilities for their intended purpose: public streets, sidewalks, alleys, parks, or other public grounds or places. (Ord. C-475, 8-19-2008)

7-9-6: INTERFERENCE WITH PARADE:

No person shall hamper, obstruct or interfere with any parade being conducted under authority of a permit duly issued by the chief of police. (1993 Code)

7-9-7: ADDITIONAL REGULATIONS APPLICABLE TO PICKETING AND DEMONSTRATIONS:

Picket lines, picketing, and demonstrations shall be subject to the following additional regulations: (1993 Code; amd. Ord. C-475, 8-19-2008)

- A. Picketing and demonstrating may be conducted only on the sidewalks reserved for pedestrian movement, and may not be conducted on the portion of a street used primarily for vehicular traffic. (Ord. C-475, 8-19-2008)
- B. Not more than ten (10) pickets promoting the same objective shall be permitted to use either of the two (2) sidewalks within a single block at any one time. (1993 Code)

- C. Pickets and demonstrators may carry written or printed placards or signs not exceeding two feet (2') in width and two feet (2') in length promoting the objective for which the picketing or demonstrating is done; provided, the words used are not derogatory or defamatory in nature.
- D. Pickets must march in single file and not abreast and not march closer together than fifteen feet (15'), except in passing one another. Pickets and demonstrators shall not be allowed to walk more than five feet (5') from the curb line and shall be in continuous motion.
- E. If pickets or demonstrators promoting different objectives desire to use the same sidewalk for picketing or demonstrating and such use would result in the presence of more than ten (10) pickets or demonstrators thereon, the chief of police shall allot time to each group of pickets or demonstrators for the use of such sidewalk on an equitable basis. (Ord. C-475, 8-19-2008)

7-9-8: **EXCEPTIONS:** The provisions of this chapter shall not apply to:

- A. Funeral processions.
- B. Any governmental agency acting within the scope of its functions. (1993 Code)