

August 10, 2009



The Honorable Mayor
and
Members of the City Council
City of Des Moines, Iowa

Dear Mayor and Council Members:

The following are answers in response to the questions raised at the July 13, 2009 Council Workshop.

Question: How many electronic traffic enforcement cameras does Davenport have?

Five intersections are covered with a varying number of cameras per intersection, seven individual fixed speed systems and one mobile speed system (vehicle).

Question: What was the fiscal impact of electronic traffic enforcement in Davenport?

The information that Davenport provided indicates that the annual revenue is approximately \$681,000 (this is based on four months of data taken since the legal challenge has been resolved and converted to an annual estimate). Given their 13 cameras/systems, this averages approximately \$52,380 annually per each system.

Question: What other issues has Davenport found that are associated with traffic cameras?

Davenport reports they have no issues with the operation of the cameras and they are very satisfied with their vendor. Except the legal challenge, which they won, Davenport advises that they have not experienced any unique problems. According to the Davenport Police Department, there are indications that driving behavior has improved since installation of the electronic monitoring systems.

Question: Can we put a timeline on when a non-conforming display lot site must come into compliance? How long is appropriate?

In brief, a definitive timeline cannot be placed on a non-conforming display lot site to come into compliance due to the conditions under Iowa law and the lack of relevant case law since home rule powers were given to Iowa cities. Following is a more detailed response:

Amortization is the concept that an otherwise legal non-conforming use which has become a nuisance at its present location because of changes to the area in which it is located, may be required to cease operations or come into conformance with the current requirements without compensation after a period of time sufficient to allow the owner/operator to amortize its investment.

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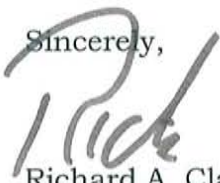
The first question that should be asked is, "Is the amortization of non-conforming uses or conditions lawful under Iowa law?" Unfortunately, it is impossible to give a definite answer to this question. In every case where the Iowa Supreme Court has directly confronted the issue of the constitutionality of amortization, it has held the challenged regulations to be in violation of the Iowa constitution. However, all of those cases predated the amendment to Iowa's constitution granting home rule powers to Iowa cities. In the single reported appellate case involving amortization since home rule, the Iowa Court of Appeals upheld a challenge to the duration of the amortization period allowed by Cedar Rapids for a non-conforming adult entertainment business. The plaintiff in that case challenged the length of the amortization period, but did not challenge the city's power to use amortization. Therefore, the court did not address the constitutionality of the underlying amortization requirement.

In summary, amortization is a concept that has been widely recognized and approved in other states, but is of questionable legality in Iowa. It is reasonable to believe that a properly drafted amortization ordinance would withstand a legal challenge, if the ordinance was clearly and tightly focused on the particular activities or conditions that create a nuisance, and allows an amortization period sufficient to allow the property owner/operator to amortize its investment.

To determine reasonableness of the amortization period, courts have made a fact specific inquiry and considered the length of the amortization period in relation to the investment and the nature of the use. Courts have also considered the improvements made to the property, the character of the neighborhood, and the detriment caused to the property owner. The owner need not be guaranteed sufficient time to recoup the full cost of the owner's investment, but the amortization period cannot be so short that it results in a substantial loss.

Please let me know if I can provide further information.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Clark", written over a white background.

Richard A. Clark
City Manager