

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	May 6, 2013
	Agenda Item No.	42
	Roll Call No.	[_____]
	Communication No.	<u>13-232</u>
	Submitted by:	Phillip Delafield, Community Development Director

AGENDA HEADING:

Ordinance amending Article VI, Chapter 42 of the Municipal Code of the City of Des Moines relating to nuisances, nuisance abatement, and notices and hearings related thereto.

SYNOPSIS:

Article VI, Chapter 42 of the Municipal Code sets out the process and procedures that the City follows in dealing with hazardous and nuisance conditions. The proposed ordinance amends various sections, repeals certain sections, and adds new sections to Article VI, Chapter 42, in order to make the nuisance notice, hearing, abatement, and assessment processes more efficient and consistent with State and federal law. This ordinance has been reviewed by City departments that are charged with enforcement and the Legal Department to improve the functionality of the City’s nuisance abatement procedures.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

The City's Legal Department has reviewed the procedures currently set forth in Chapter 42, Article VI of the Municipal Code in response to nuisance abatement and assessment questions presented by the City's Community Development, Engineering, and Public Works Departments, as well as questions from the State ombudsman. The results of such review resulted in the proposed revisions to Chapter 42, Article VI, in order to reflect requirements of State and federal law in relation to nuisance abatement, notices, hearings, and cost assessment. The input of City Department Directors, Division Managers and Administrators, and the City Clerk's office was also provided and incorporated into the proposed Code revisions.

The proposed ordinance amends the City Code by amending Sections 42-346 to 42-348, 42-352 to 42-355, 42-358 to 42-361, and 42-364, by repealing Sections 42-349, 42-350, 42-356, and 42-362 to 42-363, and by enacting new Sections 42-351, 42-358.01 and 42-358.02. These revisions are summarized as follows:

1. The definitions, specifically identified nuisances, powers of departments and the City in addressing nuisance abatement, treatment of abandoned property within City property, and other general sections of Article VI, Chapter 42 are revised for consistency with other City Code sections and to better reflect City practices (See amendments to Sections 42-346 through 42-348 and Sections 42-352 to 42-355, 42-361, and 42-364, and the addition of Section 42-351.).

2. The distinction between nuisances subject to enforcement by administrative hearing procedure and nuisances subject to enforcement only by civil action is eliminated. The current format of the City Code allows for a number of violations to be processed only through court action, while identifying other violations that can be abated by the City pursuant to either administrative hearing process or civil (court) action. For example, the Community Development Department through the Neighborhood Inspection Division is charged with clean up of nuisances including junk, debris, and unlicensed and inoperable vehicles from yards in Des Moines neighborhoods. This department uses the administrative hearing process almost exclusively in its enforcement activities. In addition, the Public Works Department has requested that certain routine violations relating to sewer and water line discharge be handled by administrative hearing rather than by court action.

The proposed revisions permit City departments to proceed under either administrative hearing or court action to address all nuisances, rather than requiring court action as the City's only option to abate certain common and significant nuisances. This change will allow City departments to abate nuisances more efficiently and inexpensively while complying with State requirements for administrative hearings (See amendments to Sections 42-348, 42-358 and 42-359, and repeal of Section 42-349.).

3. The City's notice procedure is simplified. Section 42-358 has been revised to provide the requirements for all notices sent regarding abatement of a nuisance and costs of abatement. Section 42-359, as revised, provides additional notice requirements in the event that a City department decides to proceed by civil (court) action rather than administrative hearing process to abate a nuisance. New Section 42-358.01 sets forth the requirements for service of any notice given pursuant to Article VI, Chapter 42, and revised Section 42-360 explains notices in emergency abatement actions. These revisions make the City Code more consistent with Iowa statutory requirements regarding notices of nuisance abatement, and with State and federal due process requirements.

4. The City's administrative hearing process is now consolidated. New Section 42-358.02 addresses requests for, and procedures related to, administrative hearings following notice of nuisance abatement and/or notice of cost assessment. This Section consolidates current Sections 42-362 and 42-363, which had set forth separate procedures for hearings under Article VI, Chapter 42. The current City Code language provides that "the determination of the hearing officer is the final administrative decision", meaning that any appeals of hearing officer decisions on nuisance abatement are to be appealed directly to District Court. The Neighborhood Inspection Division requested that this ordinance also allow for the decisions of the hearing officer to be appealed to the Iowa District Court should the department or the notice recipient believe that the order issued was contrary to policy or law. This ordinance revision clarifies the appeal process and directs that the decision of an administrative hearing officer is the final, appealable decision of the City, which can be appealed by either the City or the notice recipient directly to district court.

PREVIOUS COUNCIL ACTION(S):

Date: September 12, 2005

Roll Call Number: 05-2237

Action: Amending Chapter 42 of the Municipal Code regarding run-off and illicit discharge requirements of the City's National Pollution Discharge Elimination System maintenance of drainage

facilities. Moved by Hensley that this ordinance do now pass, #14,484. Motion Carried 6-1. Nays: Brooks (<http://www.dmgov.org/government/citycouncil/ordinances/14484.pdf>)

Date: February 23, 2004

Roll Call Number: 04-407, 04-408

Action: Roll Call No. 04-407, Amending Chapter 42 of the Municipal Code regarding nuisance abatement process procedure. Moved by Vlassis that this ordinance be considered and given first vote for passage. Motion Carried 7-0. Roll Call No. 04-408, Final consideration of ordinance above. Moved by Vlassis that the rule requiring that an ordinance must be considered and voted on passage at two (2) Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #14,319. Motion Carried 7-0. (<http://www.dmgov.org/government/citycouncil/ordinances/14319.pdf>)

Date: August 18, 1997

Roll Call Number: 97-2881, 97-2882

Action: Roll Call No. 97-2881, Amending Chapter 17 of the Municipal Code regarding nuisances and junk motor vehicles. Moved by McPherson that this ordinance be considered and given first vote for passage. Motion Carried 7-0. Roll Call No. 97-2882, Final consideration of ordinance above. Moved by McPherson that the rule requiring that an ordinance must be considered and voted on passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #13,518. Motion Carried 7-0. (<http://www.dmgov.org/government/citycouncil/ordinances/13518.pdf>)

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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