

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b> June 12, 2017
	<b>Agenda Item No.</b> <b>50</b> <b>Roll Call No.</b> <b><u>17-1007</u></b> <b>Communication No.</b> <b><u>17-479</u></b> <b>Submitted by:</b> <b>Pamela S. Cooksey, P.E., City Engineer</b>

**AGENDA HEADING:**

Amending Chapter 102 of the Municipal Code regarding Border Area to allow for enforcement of all items that are illegally placed in the right-of-way.

**SYNOPSIS:**

Recommend approval of the staff recommendations and the ordinance regarding the Border Area to allow for enforcement of all items that are illegally placed in the right-of-way or causing problems for the health, safety, and welfare of residents.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

- A right-of-way that is free of obstructions and nuisances provides for the safe and efficient movement of all modes of travel in the City. Some examples of these obstructions include: overgrown vegetation, boulders, brick mailboxes, fences, signs, basketball hoops, and bird baths.
- The goal is to protect the health, safety, and welfare of residents. Abutting property owners are responsible for maintaining the border area in a manner that is in a well-kept and safe condition. The City does not allow a private property owner to place private items in the public right-of-way without the necessary permits to do so. Items in the right-of-way, permitted or not, increases the risk of liability to the City, even if they are not placed by the City.
- Currently, there are four (4) ways that staff enforces items placed illegally in the right-of-way:
  - encroachment
  - nuisance
  - abandoned property
  - failure to maintain border area
- They all differ in the areas of:
  - notification process
  - allowances in the Municipal Code to mitigate the situation and recoup the costs from the property owner if they fail to comply punishable by misdemeanor fine or civil penalty
  - appeal process through the administrative hearing officer

- Staff is recommending amending Chapter 102 - Border Area in the Municipal Code to allow for consistent enforcement of all items that are illegally placed in the right-of-way.
- This will provide:
  - consistency for property owners and staff - one (1) way to enforce all items
  - same notification process for all items that are enforced
  - ability to recoup costs for removal and restoration of the right-of-way if the property owner fails to comply
  - uniform appeal process through the administrative hearing officer

The following revisions to the Municipal Code will place these changes into effect.

Sec. 42-348. Specifically identified nuisances.

(30) Failure to maintain the border area as provided in Section 102-2 of this Code.

Sec. 102-2. Maintenance of border area.

(a)The abutting property owner shall maintain the border area in a well kept and safe condition free from defects, garbage, junk, rubbish, debris, solid waste, nuisances, obstructions or any other hazards, except as permitted in section 98-54 or 98-58 of this Code; provided, however the property owner shall not be required to remove diseased trees or dead or fallen tree limbs.

(b)The property owner shall not allow any grass, weeds or other plants in the border area to exceed 12 inches in height.

(c)The property owner shall keep the border area free of any structures, materials or objects, except grass, naturally occurring plants, breakaway mailboxes or other obstructions otherwise approved by the City of Des Moines through a process provided for in this Code.

(d)The abutting property owner may be liable for damages caused by failure to maintain the border area.

(e)This section shall not apply to multi-use recreational trails, traffic control devices, traffic signs, parking meters, newspaper boxes, United States postal boxes, or those erected for home delivery; or street trees planted in conformance with city standards, provided they do not constitute a safety hazard, obstruction of view or nuisance.

Sec. 102-3. Penalties.

(a)Any person who fails to perform an act required by this chapter or who commits an act prohibited by this chapter shall be guilty of a misdemeanor punishable by fine or imprisonment as provided by section 1-15 of this Code or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.

(b)In addition to the penalties provided for in Section 102-3(a), violations of Section 102-2 are nuisances subject to abatement and enforcement as provided in Section 42-351 of this Code. Notice shall be given as provided in Section 42-358 of this code.

Sec. 102-596. Definitions.

Encroachment, in addition to its usual meaning, means any tent or other material configured or used for habitation or shelter, architectural projection, chimney, stairway, platform, step, railing, door, grate, vault, sign, banner, canopy, marquee, awning, newsrack, trash container, bench, areaway, obstruction, opening or structure, or failure to maintain the border area as provided in Section 102-2 of this Code.

**PREVIOUS COUNCIL ACTION(S): NONE**

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the first floor of City Administration Building, 400 E. Court Avenue Ste.116. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to [cityclerk@dmgov.org](mailto:cityclerk@dmgov.org).