

ORDINANCE NO. 14,393

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by repealing Section 26-42 thereof, and enacting a new Section 26-42, regarding the required separation between buildings under the International Building Code.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as amended by Ordinance No. 14,074 passed April 22, 2002, be and is hereby amended by repealing Section 26-42 thereof, and enacting a new Section 26-42, regarding the required separation between buildings under the International Building Code, as follows:

Sec. 26-42. Exterior building wall construction.

- A. Notwithstanding anything contained in section 602 or 704 of the International Building Code, an exterior wall may be constructed with openings without complying with the requirements of such sections related to opening protection, provided that before a building permit is issued which permits an exterior wall to be so constructed, the owner of the building shall furnish the building official with either of the following:
- (1) A copy of an easement or covenant running with the land applicable throughout the existence of the proposed building in which those with interests in the property abutting the side of the property on which such exterior wall is to be constructed agree not to construct a building on such abutting property within the distances to such exterior wall set forth in such sections 602 and 704 which would require such exterior wall and such building on such abutting property to have the opening protection of such sections 602 and 704, which copy shall show the book and page where such document has been filed of record in the office of the county recorder; or
 - (2) An agreement, in a form capable of being filed of record in the office of the county recorder, for the benefit of those with interest in the abutting property, by which the owner of the building and the owner of the property on which such building is to be built, jointly and severally agree, on behalf of themselves and their successors and assigns for so long as such building is in existence, that, in consideration for being permitted to build an exterior wall of such building without complying with such sections 602 and 704, at such time as a building is erected on the abutting

property within the distances to such exterior wall contained in such sections 602 and 704, they shall modify or rebuild such exterior wall to conform at least to the requirements of such sections 602 and 704 applicable to the actual separations of the buildings; such agreement shall be recorded at the expense of the applicant for the building permit.

B. Notwithstanding anything contained in section 602 or 704 of the International Building Code, an exterior wall may be constructed with openings adjacent to a public street or alley right-of-way without complying with the requirements of such sections related to opening protection, provided the following conditions are each satisfied:

- (1) The setback between the exterior wall and the far side of the adjoining public right-of-way must conform at least to the requirements of such sections 602 and 704 applicable to the actual separation of building.
- (2) The city council has by resolution declared an intent to permanently maintain the adjoining right-of-way as a public street or alley, and to never permit a structure to be constructed or placed upon the right-of-way within the required separation from the exterior wall. The resolution shall specifically describe the affected right-of-way and shall be in a form that can be recorded and indexed into the records of the county recorder.
- (3) The owner of the building has furnished a copy of the city council resolution described above, which copy shall show the book and page where such document has been filed of record in the office of the county recorder.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 04-2546), passed by the City Council of said City at a meeting held November 22, 2004 signed by the Mayor on November 22, 2004 and published as provided by law in the Business Record on December 6, 2004 Authorized by

Publication Order No. 4551.

Diane Rauh, City Clerk