

## ORDINANCE NO. 16,478

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, is hereby amended, by amending Sections 102-1 and 102-3, repealing 102-2, and adding 102-21 and 102-22, relating to border areas, Section 102-43, relating to the definitions of the maintenance of sidewalks, Section 102-126.07, relating to administrative hearings, and Sections 102-596 and 102-604, relating to encroachments.

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 heretofore amended, is hereby amended, by amending Sections 102-1 and 102-3, repealing 102-2, and adding 102-21 and 102-22, relating to border areas, Section 102-43, relating to the definitions of the maintenance of sidewalks, Section 102-126.07, relating to administrative hearings, and Sections 102-596 and 102-604, relating to encroachments, as follows:

### ARTICLE I. IN GENERAL & BORDER AREAS

#### DIVISION 1. IN GENERAL

##### **Sec. 102-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Border area* means all property between the lot lines or property lines and the curblines upon the public streets or travelled street surfaces, if no curbing is constructed.

*Carriage Walk* means a paved portion of the city right-of-way within the border area, constructed by the adjacent property owner for the purpose of connecting the curblines of a public street or travelled street surface, if no curbing is constructed, to the private property line at the edge of the street right-of-way.

*Property owner* and *owner of property* are synonymous and are defined in section 102-123 of this chapter.

**Cross reference(s)**--Definitions generally, § 1-2.

##### **Sec. 102-2. Repealed by Ord. No. 16,478.**

.....

##### **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 or who violates or resists the enforcement of the provisions of this chapter shall be guilty of a misdemeanor punishable by fine 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 fines or penalties provided for in Section 102-3(a), violations of Section 102-21 constitute public nuisances subject to abatement and enforcement pursuant to the procedures set forth in article VI of chapter 42 of this Code.
- (c) Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief, including but not limited to any order for abatement or injunctive relief from the court in the same action or as a separate action.

**Secs. 102-15--102-20. Reserved.**

## **DIVISION 2. BORDER AREAS**

### **Sec. 102-21. 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 (other than those obstructions permitted in this section) 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 abutting property owner may intentionally plant grass, flowers, shrubs, and plants, which shall exclude trees, in the border, subject to the following restrictions:
  - (1) No noxious weeds, as declared in Iowa Code 317.1A, or edible plants shall be allowed.
  - (2) No turfgrass shall exceed 12 inches in height.
  - (3) No flowers, shrubs, or plants shall exceed 36 inches in height. Flower stalks from the following plants are exempt from the 36 inch height requirement:
    - a. Lily
    - b. Daylily
    - c. Hosta
    - d. Iris
    - e. Coneflower
    - f. Bellflower
    - g. Yarrow
    - h. Astilbe
    - i. Poppy
    - j. Milkweed
    - k. Yucca
    - l. Columbine
    - m. Allium
    - n. Lupine
    - o. Veronica
    - p. Larkspur
    - q. Marigold
    - r. Zinnia
    - s. Snapdragon
  - (4) Said grass, flowers, shrubs, and plants shall not fully or partially obstruct any portion of any signs or traffic control devices.

- (5) Said grass, flowers, shrubs, and plants shall not grow on or attach to any signs, signposts, or traffic control devices.
- (c) The abutting property owner may place landscaping edging for the purpose of providing a border for intentionally planted grass, flowers, shrubs, and plants in the border area, subject to the following restrictions:
  - (1) No edging material may be used except landscaping blocks made of stone, brick or concrete or formed concrete.
  - (2) Where landscaping brick or blocks are used, edging material may only be single level and may not be stacked to increase the height of the edging above a single level.
  - (3) Where formed concrete is used, the height may not exceed six (6) inches, the depth may not exceed eight (8) inches, and width may not exceed eight (8) inches.
- (d) Only turfgrass less than 12 inches in height, ground cover only as approved by the Fire Chief or Fire Marshal, or concrete pavement or pavers flush with the surrounding finished grade, shall be located within five (5) feet of any fire hydrant.
- (e) Only turfgrass less than 12 inches in height shall be located within five (5) feet of any utility or light pole, sign post/pole, traffic control device, utility boxes or access points or any item placed within the border by the city, franchisee, or other licensed user of the right-of-way.
- (f) All grass, flowers, shrubs, plants, groundcover, landscape edging, carriage walks, and retaining walls planted, placed or constructed by or for the property owner shall be at the property owner's sole risk and cost. The city shall not be required to incur any cost associated with such materials planted, placed or constructed by or for the property owner. (g) In the event the city is required to restore any portion of the border area, such restoration shall be limited to turfgrass only. (h) All grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls planted, placed or constructed in the border area shall be subject to all requirements of Chapters 122, 134 and 135 of this Code.
- (i) All grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls located within the vision clearance triangle shall be subject to the requirements of Sections 114-14, 114-14.01, and 114-14.02 of this Code.
- (j) The location of said grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls shall not interfere with access to, installation, construction, repair, reconstruction, relocation, or maintenance of any utilities located and/or operated within the border area. All grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls placed within the border area shall be subject to existing and future utilities within the border area. In the event said grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls are impacted, removed or damaged for the installation, construction, repair, reconstruction, relocation or maintenance of the border area, the property owner shall be solely responsible for the replanting or reconstruction of any items placed or planted in the border by the property owner. All damage to utilities resulting from the planting or placement of said grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls shall be at the sole cost of the property owner.
- (k) The location of said grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls shall not interfere with access to, installation,

construction, repair, reconstruction, relocation or maintenance of any public improvements located and/or operated within the border area. All grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls placed within the border area shall be subject to existing and future public improvements within the border area. In the event said grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls are impacted, removed or damaged for the installation, construction, repair, reconstruction, relocation or maintenance of the border area, the property owner shall be responsible for the replanting or reconstruction of any items placed or planted in the border by the property owner. All damage to utilities and/or the public right-of-way resulting from the planting of said grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls shall be at the sole cost of the property owner.

- (l) Said grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls shall not encroach upon any portion of the roadway, alley, or sidewalk which decrease the width of a sidewalk to less than four (4) feet or the width of an alley to less than ten (10) feet.
- (m) All carriage walks, as defined in Article I, Section 102-1, shall be subject to the requirements in Section 102-22.
- (n) The abutting property owner may place mulch or landscaping rock as groundcover in the border. Rocks may not exceed 2 inches in diameter.
- (n) A retaining wall may be placed within the border area where required to retain soil to prevent movement or erosion. When a retaining wall is placed in the border, a license shall be required subject to the requirements of Sections 102-605 and 102-606 of this Code.
- (o) The abutting property owner shall keep the border area free of any structures, materials or objects, except grass, flowers, shrubs, plants, groundcovers, landscape edging, carriage walks, and retaining walls as allowed herein, breakaway mailboxes or other obstructions approved by the city through a process provided for in this Code.
- (p) Initial installation, repair, and maintenance of all groundcover, landscape edging, carriage walks, and retaining walls shall be subject to the permit requirements in Article IX, Division 2.
- (q) The abutting property owner may be liable for damages caused by failure to maintain the border area.
- (r) 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 that do not constitute a safety hazard, obstruction of view or nuisance.

#### **Sec. 102-22. Carriage Walks**

- (a) If the owner or occupant of any property abutting a city street desires to construct a carriage walk within the city street right-of-way, it shall be the responsibility of the owner or occupant of the abutting property to protect and maintain the carriage walk constructed in the city right-of-way. The city or any other person, firm or governmental entity having utility, traffic control or other equipment in the city right-of-way where the carriage walk is situated shall not have any duty to protect or repair the carriage walk if it is destroyed, damaged, disturbed or adversely impacted due to the repair, maintenance or replacement of any such equipment.

- (b) A maximum of one (1) carriage walk per property may be constructed using concrete or brick.
- (d) The carriage walk cannot exceed five (5) feet in width and must be constructed a minimum of forty (40) feet from midblock and intersection pedestrian crossings. Where designated pedestrian crossings are not present at an intersection, the forty (40) feet shall be measured from end of the intersection radius return.
- (e) All carriage walks shall be subject to the permit requirements in Article IX, Division 2. A sidewalk permit as outlined in Section 102-75 shall not be required for the construction of a carriage walk.
- (f) All carriage walks shall comply with requirements outlined in Sections 102-21 and 102-3.5 of this code.

**Secs. 102-23--102-40. Reserved.**

**Sec. 102-43. Definitions - maintenance of sidewalks.**

As used in divisions 1 and 2 of this article, the following words have the following meanings:

*“City inspector”* means any city employee designated by the department director to undertake the city’s inspection and notice actions as set forth in divisions 1 and 2 of this article.

*“Defect”* or *“defective condition”* means a public sidewalk has a defect or defective condition when it exhibits one or more of the following characteristics:

- (1) Vertical separations equal to three-fourth inch (3/4”) or more;
- (2) Horizontal separations equal to three-fourth inch (3/4”) or more;
- (3) Holes or depressions equal to three-fourth inch (3/4”) or more;
- (4) Spalling over fifty percent (50%) of a single square or panel of sidewalk with one or more depressions equal to one-half inch (1/2”) or more;
- (5) A single square or panel of sidewalk cracked in such a manner that no part thereof has a piece greater than one (1) square foot, or is cracked in such a manner that it constitutes danger or potential danger to the public;
- (6) A sidewalk with any part thereof missing to the full depth;
- (7) A deviation on the staked and constructed grade equal to three-fourth inch (3/4”) or more;

(8) Covered in whole or in part with weeds or other plants, garbage, junk, rubbish, debris, solid waste, bird or animal droppings or any nuisances, obstructions or hazards which makes or tends to make pedestrian travel either dangerous or impractical. *“Department director”* means the director of any city department charged with enforcement of any section of divisions 1 and 2 of this article, or his or her designee.

*“Maintain”* or *“maintenance”* means the duty to remove and replace a public sidewalk, or a portion of a public sidewalk, all work to be performed in accordance with established city specifications in effect at the time the work is commenced, so as to render the sidewalk free from defect.

*“Property owner”* or *“owner”* means the record holder of legal title, and the contract purchaser, if there is one of record, and may be referred to as “person” in division 2 of this article.

“*Sidewalk*” means the paved portion of that area between the curb lines of the roadway and the adjacent property lines intended for the use of pedestrians.

.....

**Sec. 102-126.07. Administrative hearing.**

- (a) A person to whom a notice of administrative penalty has been issued for violation of sections 102-21, 102-124 and/or 102-126 may request an administrative hearing for review of the finding that a violation occurred pursuant to and in conformance with chapter three of this code.
- (b) A request for hearing on a notice of administrative penalty shall be made in writing and filed with the city clerk within ten (10) calendar days of the date of issuance of the notice. Such request shall include the address of the violator and state the basis for the appeal.

**Sec. 102-596. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Barrier* means a man-made object, other than a bollard, which is used to obstruct the passage of vehicles and to separate pedestrian and vehicular traffic.

*Border Area* means as defined in section 102-1.

*Bollard* means a vertical post designed and used to obstruct the passage of vehicles and to separate pedestrian and vehicular traffic.

*Breakaway mailbox* means a mailbox approved by the U.S. Postal Service and used for the curbside delivery of mail, which is supported by a wood post no greater in cross section than four inches square or by a post with a strength no greater than a two-inch diameter standard steel pipe. Two such posts may be used to support a cluster of four or more mailboxes.

*City engineer* means the head of the engineering department or the engineer's duly authorized designee.

*Department* means any city department charged with the enforcement of any section enumerated in this article.

*Department Director* means the head of any city department or that person's duly authorized designee.

*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, vehicle impact protection device, areaway, obstruction, retaining wall, opening or structure, or failure to maintain the border area as provided in Section 102-21 of this Code.

*Event venue* means a structure that hosts gatherings of people with a seating capacity of 2,500 or more.

*Newspaper delivery receptacle* means a device for receiving and containing newspapers delivered for and at the request of a subscriber to the newspaper.

*Newsrack* means an encroachment in the form of an unmanned device for the vending or free distribution of newspapers or news periodicals; provided, however, that this definition shall not include newspaper delivery receptacles.

*Public property*, in addition to its usual meaning, means any street, highway, avenue, alley, sidewalk, skywalk bridge, public place or other real property owned or controlled by the city.

*Vehicle* means as defined in section 114-1.

*Vehicle impact protection device* means a device that is designed, engineered, and sited so as to effectively separate areas of pedestrian and vehicular travel and prevent vehicles from entering areas which are solely intended for pedestrian use and travel and shall be comprised of bollards, barriers, or a combination of both.

**Cross reference(s)**--Definitions generally, § 1-2.

**Sec. 102-604. Exemptions from article.**

Nothing in this article shall be held in any way to prohibit or regulate the maintenance or placement of the following:

- (1) Manholes, pits or covers in connection with the construction and operation of any water, telephone, gas or electric connections, pipes or conduits or the use of any public property by public service corporations to whom such right has been granted by franchise.
- (2) Footings or foundations of buildings constructed in accordance with the city building code.
- (3) Any official flag which projects over public property at least eight feet above grade and not closer than two feet from a curbline measured horizontally.
- (4) Any fascia sign on and parallel to any wall or building at least eight feet above grade and projecting 18 inches or less over public property.
- (5) Temporary encroachments that are regulated under the city building code, provided that encroachments closer than four feet to the curbline shall receive the approval of the city engineer.
- (6) Encroachments within the skywalk system. Any such encroachments shall be regulated under article IV of this chapter.
- (7) Newspaper delivery receptacles when installed by any person who publishes a newspaper of general circulation, as defined by state law, for and at the request of subscribers to the newspaper, so long as the receptacles do not encroach in, upon or over the traveled portion of the public way.
- (8) Fire escapes.
- (9) Portable flower pots and planters, not permanently attached to the sidewalk, provided: i) an unobstructed pathway over the sidewalk is maintained having a width of at least six feet, or the full width of any sidewalk less than six feet wide; ii) the pot or planter occupies less than 8 square feet of area; iii) the pot or planter does not create a hazard to pedestrian or vehicular travel; and iv) no signage is placed on the pot or planter.
- (10) Breakaway mailboxes.
- (11) Mailboxes constructed prior to May 1, 2003, that are not breakaway mailboxes. However, the burden of establishing that an existing mailbox was constructed prior to May 1, 2003, shall be upon the owner. Any mailbox, when replaced, shall be replaced with a breakaway mailbox.
- (12) The use of a sidewalk or other city-owned property for a sidewalk cafe operated pursuant to a sidewalk cafe permit agreement or sidewalk cafe lease agreement pursuant to section 102-576.

- (13) Retaining walls constructed in the border area, prior to July 1, 2025, when the following qualifications are met:
- (1) The burden of establishing that the retaining wall was constructed prior to July 1, 2025, shall be upon the owner.
  - (2) A license must be in place within sixty (60) days of notification to the property owner by the City, if the City determines that the retaining wall is not exempt from acquiring a license under this section.
  - (3) Any retaining wall, when replaced, shall require a new license.

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

FORM APPROVED: Chas M. Cahill, Assistant City Attorney

Connie Boesen, Mayor

Attest: I, Laura Baumgartner, 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. 25-0948), passed by the City Council of said City at the meeting held on June 30, 2025 and signed by the Mayor on June 30, 2025 and published and provided by law in the Business Record on July 18, 2025. Authorized by Publication Order No. 13053.

Laura Baumgartner, City Clerk