



Roll Call Number

Agenda Item Number

47

Date June 26, 2017

An Ordinance entitled, "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 amending Sections 42-348, 102-2, 102-3 and 102-596, relating to maintenance of border areas",

which was considered and voted upon under Roll Call No. 17- 1007 of June 12, 2017; again presented.

Moved by _____ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				
MOTION CARRIED		APPROVED		
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk



**Council
Communication**
Office of the City Manager

Date:	June 12, 2017
Agenda Item No.	50 47
Roll Call No.	[17-1007]
Communication No.	17-479
Submitted by:	Pamela S. Cooksey, P.E., City Engineer

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.

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ORDINANCE NO. _____

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 amending Sections 42-348, 102-2, 102-3 and 102-596, relating to maintenance of border areas.

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 42-348, 102-2, 102-3 and 102-596, relating to maintenance of border areas, as follows:

Sec. 42-348. Specifically identified nuisances.

Specifically identified nuisances include the following:

- (1) Depositing any poisonous material or substance on any real property, so as to allow access to it by any animal or person.
- (2) Depositing or storing of flammable junk on any real property, including but not limited to old rags, rope, cordage, rubber, boxes, and paper, unless it is in a building of fireproof construction.
- (3) Depositing or storing outside a completely enclosed building items that constitute a threat to the public health, safety or welfare, including but not limited to the following: old or scrap rope, rags, batteries, paper, trash, rubber debris, tires, waste, used lumber or salvaged wood, inoperable machinery or appliances or parts of such machinery or appliances, vehicular component parts, iron, steel, old or scrap household goods or hardware, cut brush or wood including dead or decaying plant material except as contained in a compost pile or orderly stacked firewood if cut in lengths of four feet or less and stored at least eighteen (18) inches above the ground surface.
- (4) Placement, storage or abandonment of refrigerators, iceboxes or similar containers equipped with an airtight door, lid with a snap, lock or other device which cannot be released from the inside, outside any building or dwelling or within any unoccupied or unsecured building, dwelling or other structure if the door or lid is not disabled.
- (5) Depositing or storing of litter, garbage or organic waste on any real property; provided, however, that this article shall not prohibit the storage of litter, garbage or organic waste in authorized private receptacles for collection.

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- (6) Any tree, shrub, wood or debris which is:
 - a. Infected with Dutch elm disease, oak wilt, or any disease that is a threat to the entire urban forest; or
 - b. Infested with emerald ash borer or Asian longhorned beetle or any insect that is a threat to the entire urban forest; or
 - c. Dead or damaged so as to constitute a threat to the public health, safety or welfare.
- (7) Any tree, shrub, or any other plant whose foliage extends over the city right-of-way in violation of section 114-14 or 122-10 of this Code.
- (8) Graffiti as is defined in division 2 of article VI of chapter 70 of this Code when placed on any surface not primarily intended for such use, except as specifically permitted therein.
- (9) Any motor vehicle, trailer or boat that is unlicensed, unsafe or inoperable found upon public or private real property, and the contents therein, which is not stored within an enclosed building. This article shall not apply to legitimate businesses operating in a lawful place and manner provided, however, that such outside areas are screened from public view and do not constitute a threat to the public health, safety or welfare.
- (10) Obstructing or encroaching by motor vehicles or otherwise upon any public or private road, street, highway, or right-of-way which causes traffic or pedestrians to cross the marked centerline or leave the usual traveled portion of the roadway, right-of-way or sidewalk to travel around the obstruction or encroachment. This article shall not apply to emergency vehicles and official government or utility vehicles in the performance of their duties nor to other vehicles while legally maneuvering into position or momentarily engaged in receiving or discharging passengers, loading or unloading of merchandise, in obedience to traffic regulations, signs or signals, in an involuntary stopping of the vehicle by reason of causes beyond the control of the operator, or as otherwise authorized in writing by the city.
- (11) Businesses, the operation or maintenance of which adversely impacts nearby residential or commercial uses and which:
 - a. Jeopardizes or endangers the public health or safety, or the health or safety of persons residing or working on the premises or in the surrounding area;
 - b. Has resulted in or facilitated any of the following activities: disturbances of the peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, illegal parking, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, traffic violations, or police detention, citations or arrests; or
 - c. Violates any other section of this article or any other city, state or federal regulation, ordinance or statute.
- (12) Abandonment or allowing the abandonment of property in or upon any public real property. Personal property left in or upon public real property, including but not limited to any personal and household items, furniture, appliances, machinery, equipment, building materials, or other items, shall be deemed abandoned.

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- (13) Erecting or using any building or place for the exercise of any trade, employment, or manufacture, which by occasioning noxious exhalations, offensive smells, or other annoyances that constitute a threat to the public health, safety or welfare.
- (14) Emitting dense smoke, noxious fumes, or fly ash.
- (15) Causing or allowing any offal, filth, or noisome substance to be collected or to remain in any place.
- (16) Discharging sewage, garbage, or any other organic waste matter into or on any public or private real property.
- (17) Transporting garbage, night soil, or other organic filth in vehicles or containers which leak or which allow access by insects to the material being transported.
- (18) Except as permitted or authorized in writing by the city, obstructing, encroaching upon, or encumbering by fences, buildings, trees, shrubs, or otherwise any public real property, road, private way, street, alley, traffic control device, streetlight, common, landing place, or burying ground.
- (19) Obstructing or impeding, without legal authority, the passage of any navigable river, marina, or collection or body of water.
- (20) Corrupting or rendering unwholesome or impure the water of any river, stream, lake or pond, or other body of water, or unlawfully diverting such water.
- (21) Billboards, signboards, and advertising signs, whether erected and constructed on public or private real property, which so obstruct or impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or railway track as to render dangerous the use thereof.
- (22) Any sign or sign structure which is structurally unsafe or which constitutes a hazard to the public health, safety or welfare because of its location, inadequate maintenance or dilapidation or which is not kept in good repair or which is capable of causing an electric shock to persons likely to come in contact with it.
- (23) Any sign, sign structure, vehicle or any other property or structure which obstructs free ingress to or egress from a door, window, fire escape, or any other entrance or exit required by this Code or any other law.
- (24) Signs accessible to the general public containing obscene statements, words, or pictures. As used in this subsection, the term "obscene" means and includes any depiction or description of genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive, and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value.
- (25) Depositing or permitting to be deposited dirt, debris, or other material:
 - a. Onto public real property, except as part of a city project or city function or as otherwise permitted or authorized in writing by the city;
 - b. Into a private storm sewer or drainage way in an amount which could obstruct the flow of water in a public storm sewer or drainage way located upstream from such private storm sewer or drainage way; or
 - c. Onto public or private real property so as to obstruct or divert the natural flow of surface water causing or threatening to cause damage to a building or its contents on adjoining property.

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- (26) Any discharge, directly or indirectly, of waters which collect upon private real property from subsurface or surface drainage, including but not limited to that from building footing drains:
 - a. To a point upon or so adjacent to a public sidewalk or street as to permit the waters so discharged to drain upon a public sidewalk or street during other than periods of community emergency generated by extraordinary high levels of precipitation; or
 - b. Onto adjoining real property causing or threatening to cause damage to any building, its contents, any structure, or any other thing of value on such adjoining real estate. The city engineer may require that any such discharge be connected to the public sewer system, if available, or be redirected to a discharge point which eliminates or lessens the nuisance.
- (27) The discharge of water upon or under a public street or sidewalk because of faulty water service.
- (28) Any object or structure that may be erected within 1,000 feet of the limits of any municipal or regularly established airport or landing place which may endanger or obstruct aerial navigation, including takeoff and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the object or structure is located.
- (29) The existence of any hazardous substance, as defined in section 46-92 of this Code, that has been or is being discharged or released into the environment or that is not properly stored or labeled or that is not secured from access by the public.
- (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 approved by the city 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 that 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

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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.

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:

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, areaway, obstruction, opening or structure, or failure to maintain the border area as provided in Section 102-2 of this Code.

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

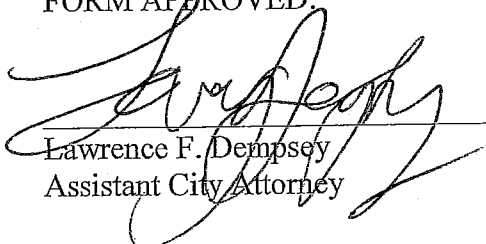
Newsrack means an encroachment in the form of an unmanned device for the vending or free distribution of newspapers or news periodicals; provided, however, that this definition shall not include newspaper delivery receptacles.

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.

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

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

FORM APPROVED:


Lawrence F. Dempsey
Assistant City Attorney