



Roll Call Number

Agenda Item Number

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Date August 6, 2018

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 42-28, 42-86, 42-91, 42-121, 42-183, 42-184, 42-188, 42- 189, 42-191, 42-479, 42-480, 42-481, 42-483, 42-484 and 42-485, relating to drainage pipe installation in drainageways, and grading requirements, and public nuisance abatement and assessment administrative process",

which was considered and voted upon under Roll Call No. 18- 1278 of July 23, 2018; 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				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
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

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: July 23, 2018
	Agenda Item No. 43 Roll Call No. [18-1278] Communication No. 18-384 Submitted by: Phillip Delafield, Assistant City Manager and Steven L. Naber, P.E., City Engineer

AGENDA HEADING:

Amending Chapter 42 of the Municipal Code relating to drainage pipe installation in drainageways, and grading requirements, and public nuisance abatement and assessment administrative process.

SYNOPSIS:

This action amends Chapter 42 to include provisions that requires a grading permit for the installation of a drainage pipe (culvert) in a public or private drainageway; and for excavation, fill, or grading that modifies or alters the flow of storm water, and which effects adjacent or abutting property. Staff recommends approval.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

- The City often receives complaints about pipes installed on private property that impact adjacent properties, including culverts that are installed in defined waterways. Currently there are no permit processes for this work, so the City is usually unaware of these projects until a complaint is received. Adding a requirement for a grading permit for this work will allow City staff to review plans and calculations to ensure correctly sized pipes are installed, and that no adjacent properties will be negatively impacted by the proposed work.
- Some of the references to the Public Works Director have been changed to the City Engineer as Engineering staff manages the grading permits.
- Revised language in Sections 42-188 and 42-189 to refer to public nuisance administrative process in Article VI, Chapter 42.

PREVIOUS COUNCIL ACTION(S): NONE

BOARD/COMMISSION ACTION(S): NONE

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ORDINANCE NO. _____

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 42-28, 42-86, 42-91, 42-121, 42-183, 42-184, 42-188, 42-189, 42-191, 42-479, 42-480, 42-481, 42-483, 42-484 and 42-485, relating to drainage pipe installation in drainageways, and grading requirements, and public nuisance abatement and assessment administrative process",

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 42-28, 42-86, 42-91, 42-121, 42-183, 42-184, 42-188, 42-189, 42-191, 42-479, 42-480, 42-481, 42-483, 42-484 and 42-485, relating to drainage pipe installation in drainageways, and grading requirements and public nuisance abatement assessment administrative process, as follows:

Sec. 42-28. Definitions.

The definitions found in sections 42-451 and 42-477 shall apply to the provisions of this article, provided, however that 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:

Public nuisance means whatever is injurious to health, or unreasonably offensive to the senses or is a menace to or hazard to the public health, welfare or safety, including without limitation, the runoff of pollutants from a construction site, or as provided in sections 42-347 and 42-348 of this chapter.

Sec. 42-86. Permits required.

- (a) No person other than authorized city personnel or city contractors shall grade, strip, excavate, fill, stockpile or cause any non-agricultural earth change on any site, or install drainage pipe in public or private drainageways, without a grading permit issued by the city engineer for any of the following purposes:
 - (1) Platting of land pursuant to chapter 106, pertaining to subdivisions, of this Code.

- (2) Development of land for which a site plan is required, pursuant to article V of chapter 82 of this Code.
 - (3) Installation of utility improvements in trenches that are greater than one foot in width or underground appurtenances with an excavated surface area greater than 400 square feet by a public or private utility company.
 - (4) Excavation or the creation of any disturbed surface of 500 square feet or more of cumulative area within 100 feet of a lake, pond, river, stream, recognized drainageway or within the defined flood fringe of a river or stream.
 - (5) Excavation, fill, or grading that modifies or alters the flow of stormwater and which effects adjacent or abutting property.
 - (56) Any excavation or cause of earth change more than an average of two feet in depth across 2,500 square feet or more of area, or creation of a disturbed area more than 20,000 square feet in area, excluding basement excavations and backfill, utility service connections for one- or two-family residential dwellings, and utility trenches no greater than one foot in width. This exception does not apply to construction activity which is part of a larger common plan of development that requires a NPDES General Permit No. 2.
 - (67) Any fill of dirt, stone, brick, concrete, soil or similar material covering a cumulative area larger than 2,500 square feet.
 - (78) Stockpiling of any granular construction material in excess of 5,000 cubic yards on any site.
- (b) A grading permit will not be necessary for any of the activities identified in subsection (a) where, prior to formal application, the applicant receives from the city engineer a written statement that the planned work or final structures or topographical changes, as presented by the applicant to the city engineer prior to formal application, will not result in or contribute to accelerated soil erosion or sedimentation, will not significantly interfere with any existing drainage course, and will comply with the requirements of the tree removal and mitigation ordinance codified in Article X of Chapter 42 of this Code. A grading permit will also not be required for work performed by city crews or for city construction projects under direct control of the city engineer.
- (c) Persons exempt from permitting requirements are nonetheless subject to illicit discharge regulations found in article IX of this chapter.

Sec. 42-91. Failure to complete work.

For failure to complete the grading work or failure to comply with all requirements, conditions, and terms of the grading permit and if such failure or uncompleted work constitutes a nuisance pursuant to sections 42-349 42-347 or 42-348 of this chapter, the city may give notice to the owner to abate such nuisance or cause such nuisance to be abated and, upon failure of the owner to do so, may perform the action necessary to abate such nuisance and assess the cost of abatement against the property, all in accordance with article VI of this chapter and I.C. § 364.12(3)(h). In addition, to the extent such permit has been issued pursuant to an application for site plan or subdivision approval, no further action shall be taken by the city pursuant to such site plan or subdivision application until such time as (i) the city has been reimbursed the costs incurred

by it pursuant to the abatement, and (ii) the requirements, conditions and terms of the permit have been completed to the satisfaction of the city engineer and a certification of completion has been issued therefor. The enforcement provisions of this section are in addition to those set out in section 42-183 of this article.

Sec. 42-121. Grading operations.

The applicant or the owner of the property or any part thereof shall be responsible for the following:

- (1) The prevention of damage to any public utilities or services within the limits of grading and along any routes of travel of the equipment.
- (2) The prevention of damage of adjacent property.
- (3) Carrying out the proposed work so as not to grade on land so close to the property line as to endanger any adjoining public street, sidewalk, alley, or any other public or private property without supporting and protecting such property from settling, cracking, or other damage which might result.
- (4) Carrying out the proposed work in compliance with the approved plans, the requirements of this article, the NPDES General Permit No. 2 covering the property, the SWPPP covering the property, and all applicable state and federal laws and regulations, and in compliance with section 106-136 of the municipal code.
- (5) The prompt removal of excessive soil, miscellaneous debris, or other materials applied, dumped, or otherwise deposited on public streets, highways, sidewalks, or other public thoroughfares during transit to and from the construction site so as to prevent a violation of sections ~~42-349~~ 42-347 and 42-348 of this chapter.
- (6) Completing the grading operation and the erosion control measures within the approved time schedule.
- (7) Conducting any earth changes in such a manner as to effectively reduce accelerated soil erosion and resulting sedimentation.
- (8) Designing, implementing and maintaining acceptable soil erosion and sedimentation control measures, in conformance with the Soil Conservation Districts Law, I.C. § 161A.1 et seq., and the adopted rules of the Polk Soil Conservation District as they pertain to erosion control and which effectively reduce accelerated soil erosion.
- (9) Designing, constructing and completing all earth changes in such manner that the exposed area of any disturbed land shall remain exposed for the shortest possible period of time so as to prevent a violation of sections ~~42-349~~ 42-347 and 42-348.
- (10) Updating, amending, implementing and maintaining the SWPPP, making required inspections and keeping inspection reports, and retaining all plans and reports, in accordance with the applicant's NPDES General Permit No. 2 requirements.
- (11) Carrying out the proposed work in compliance with any applicable tree removal and mitigation plan approved pursuant to the tree removal and mitigation ordinance codified in Article X of Chapter 42 of this Code.

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Sec. 42-183. Determination of pollutants as public nuisance and notice and abatement.

- (a) Pollutants deposited or discharged into the MS4 or onto public or private property in violation of Sec. 42-121 are deemed to constitute a public nuisance.
- (b) If the city engineer or the director determines that a nuisance exists, the city engineer or director shall give notice of the existence of the nuisance pursuant to ~~Sec. 42-188~~ article VI of this chapter and order abatement of such nuisance. The city may cause such pollutant to be removed, after providing the owner of the real property from which the pollutant originated with notice of the need to remove such pollutant and that if not removed the city will cause such removal and will assess the costs for such abatement. ~~Service of the abatement notice shall be by regular mail, addressed to the owner of the real property, or by posting on the property if the address of the owner is unknown.~~ The notice shall provide at least a twenty-four (24) hour period for removal of the pollutant by the property owner prior to the city's removal and notice of the right to a hearing on the finding of a public nuisance pursuant to ~~Sec. 42-188~~ article VI of this chapter.
- (c) Provided, however, that the city may cause such removal without prior notice in the event that such deposit or discharge presents an imminent risk of harm to person or property, and the director declares an emergency on account thereof, pursuant to article VI of this chapter.

Sec. 42-184. Right to assess costs of removal by city.

When the city removes pollutants pursuant to section 42-183, the city may assess the actual costs of removing such pollutants to the owner of the real estate found to be in violation of section 42-121 pursuant to ~~sections 42-183 through 42-189~~ article VI of this chapter, in addition to taking any other action provided for in this article.

Sec. 42-188. Notice of right to administrative hearing on public nuisance.

- (a) When the city makes a finding of a public nuisance and/or removes pollutants pursuant to section 42-183, a notice shall be given to the owner of the property subject to assessment of the right to an administrative hearing regarding the existence of and responsibility for the public nuisance, and regarding costs of the removal pursuant to sections 42-358 and 42-358.01. ~~The notice shall contain the following information:~~
 - (1) ~~A description, to the extent possible, of the public nuisance;~~
 - (2) ~~A description of the location where pollutants were removed;~~
 - (3) ~~An indication of the date and time that the city caused the removal, and that the costs of the removal have been or will be assessed against the real estate from which the pollutant was discharged;~~
 - (4) ~~An itemization of the costs incurred by the city in the removal of the pollution;~~
 - (5) ~~That the person notified, or the person's duly authorized agent, may file a written request for hearing as set forth in this section; and~~
 - (6) ~~That failure to make a written request for a hearing to the city clerk within ten days of the date of the notice shall be considered a waiver of the right to a hearing and it will thereafter~~

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~~be conclusively presumed that the nuisance and removal occurred and costs will be assessed against the real estate without further notice.~~

- ~~(b) Service of the notice provided for in subsection (a) hereof shall be by regular mail, addressed to the owner of the real estate upon which the public nuisance occurred or is occurring, or shall be by posting upon such property if the address of the owner is unknown.~~

Sec. 42-189. Administrative hearing for public nuisance and assessment of costs for removal.

- ~~(a) Any person in receipt of a notice pursuant to Sec. 42-188 may have, upon written request pursuant to section 42-358.02 of this chapter, made in writing and filed with the city clerk within ten (10) days of the date of issuance of the notice, an administrative hearing held pursuant to section 42-358.02 of this chapter before the city manager, or before a hearing officer appointed by the city manager, to determine if the public nuisance occurred, or to determine if the amount to be assessed is reasonable and if the assessment shall be placed against the subject property.~~
- ~~(b) A request for hearing shall: (1) contain the address of the person requesting the hearing and to which all further notices shall be mailed or served; and (2) shall state the basis for the appeal.~~
- ~~(c) The hearing shall be scheduled to be held as soon as practicable and no later than 14 days after the request for hearing was filed with the city clerk. The person requesting the hearing shall be notified in writing or by telephone of the date and place of such hearing at least three days in advance thereof.~~
- ~~(d) At such hearing the public works department and/or the engineering department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.~~
- ~~(e) The city manager or hearing officer may determine whether or not a public nuisance occurred, who is responsible for the public nuisance, whether the city caused the removal of the pollutants in accordance with this division, and whether the assessment for costs of abatement is reasonable or should be reduced or waived, as appropriate.~~
- ~~(f) The determination of the city manager or hearing officer is a final administrative decision.~~
- ~~(g) Failure to request a hearing within ten days of the date of issuance of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the property owner is responsible for the public nuisance.~~

Sec. 42-191. Inspection and order to terminate construction activities.

- (a) The city engineer may enter at all reasonable times in or upon any private or public property to inspect and investigate work being done under a permit issued pursuant to this article and to inspect and investigate conditions and practices which may be a violation of this article or rules of the soil conservation district. The city engineer shall have the authority to issue an order in writing to the owner of the property and/or any person engaged in grading or construction activities on the property, ordering such person or persons to cease and desist from construction activities due to failure to implement or maintain the SWPPP or any pollution control BMPs therein identified. The order shall be delivered by personal

service unless the owner or person engaged in grading or construction activities cannot be found within the city, in which event notice shall be by ordinary mail addressed to the owners and/or applicant's last known address and by posting a copy of the notice in a conspicuous place at the construction site.

- (b) Construction activities shall cease on the date stated in the city engineer's order and shall not recommence without the prior written approval of the city engineer.
- (c) The person to whom the notice is directed may make a written request to the city engineer for a reconsideration and hearing on the cease and desist order and/or abatement order within ten (10) days from the issuance of the order, provided, however, that work on such property shall cease pending the outcome of the hearing.
- (d) The request for hearing shall (1) contain the address of the person requesting the hearing and to which all further notices shall be mailed or served, and (2) shall state the basis for the appeal.
- (e) The hearing shall be scheduled to be held as soon as practicable and no later than fourteen (14) days after the request for hearing was filed with the city engineer. The person requesting the hearing shall be notified in writing or by telephone of the date and place of such hearing at least three (3) days in advance thereof. At such hearing the city engineer and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.
- (f) If the city engineer determines that the violation has created a public nuisance, the city engineer may order abatement of the nuisance by whatever means the city engineer may determine appropriate.
- (g) The determination of the city engineer shall be a final administrative decision.
- (h) In the event that the abatement as ordered by the city engineer is not performed, the city engineer may cause the abatement of the nuisance and assess the costs of abatement to the property for which the grading permit was issued in compliance with article VI of this chapter.

Sec. 42-479. City approval required for construction of private drainage pipes or related facilities or for connection to city drainage facilities.

Persons other than authorized city personnel or city contractors are prohibited from working on or making alterations or additions to city drainage facilities, including the making of connections or attachments to any city storm sewer, or to any city maintained constructed channel, ~~public drainageway or stormwater drainage area,~~ without prior approval and issuance of permit by the ~~director~~ city engineer. All proposed new installations of or improvements to driveway pipes or aprons, private drainage pipes or private drainageways or related facilities, running immediately to, from, or in city maintained street rights-of-way, city easement area or city stormwater drainage area, must be reviewed by the ~~director~~ city engineer and, if approved, shall be installed in accordance with city standards and specifications. All permitted improvements shall be subject to inspection by the ~~director~~ city engineer prior to final approval.

Sec. 42-480. Piping of private drainageways.

The owner of any property, across or through which a private drainageway passes, shall be prohibited from installing a drainage pipe to enclose such drainageway in whole or in part without prior approval and issuance of permit by the ~~director~~ city engineer. All proposed new drainage pipes to be installed on private property ~~to enclose a drainageway must be reviewed by the city and, if approved,~~ shall be installed in accordance with city standards and specifications. All permitted improvements shall be subject to inspection by the ~~director~~ city engineer prior to final approval.

Sec. 42-481. Removal of substandard drainage pipes and related facilities.

When a private drainage pipe or related facilities have been placed upon private property or in a city maintained street right-of-way, in a city maintained easement area, or in a city stormwater drainage area, and when it is determined by the ~~director~~ city engineer that such drainage pipes or related facilities do not meet city standards and specifications, thereby endangering public safety or public or private property, or causing frequent maintenance problems, the ~~director~~ city engineer may issue an order to the owner of such private property or to the person who installed such substandard drainage pipe or related facilities, directing that such substandard facilities be removed and that the drainage pipes and/or related facilities be brought up to minimum city standards and specifications. Whether the existing substandard drainage pipes and/or related facilities were constructed prior to or after the adoption of this subdivision, the city may require the person who constructed or who owns, operates or maintains such substandard drainage pipe or related facility to remove and replace the facility to minimum city standards and specifications at the sole expense and responsibility of such person.

Sec. 42-483. Enforcement.

The ~~director~~ and the city engineer shall be authorized to enforce this subdivision as hereinafter provided.

Sec. 42-484. Enumeration of stormwater drainage nuisances.

The following are nuisances that may be prosecuted as ~~hereinafter~~ provided in article VI of this chapter:

- (1) The installation or maintenance of a substandard drainage pipe in a private drainageway, in a city street right-of-way, in a city maintained easement area, or in a city stormwater drainage area, resulting in the flooding of properties adjacent to said drainageway either upstream or downstream from said pipe or in said watershed, or resulting in the obstruction or surcharging of or damage to public drainageways, public storm sewers, sanitary sewers or the MS4.
- (2) Failing to adequately maintain or periodically clean a private drainage pipe installed in a private drainageway, resulting in the flooding of properties adjacent to said drainageway either upstream or downstream from said pipe or in said watershed,

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- or resulting in the obstruction or surcharging of or damage to public drainageways, public storm sewers, sanitary sewers or the MS4.
- (3) Failing to adequately maintain or periodically clean a public drainageway on private property or a private drainageway, resulting in the flooding of properties adjacent to said drainageway either upstream or downstream from the inadequately maintained or cleaned portion thereof, or resulting in the obstruction or surcharging of or damage to public drainageways, public storm sewers, sanitary sewers or the MS4.

Sec. 42-485. Notice of abatement.

If the director or city engineer determines that a storm water drainage nuisance as described in section 42-484 of this division has occurred or is occurring, such nuisance may be abated and enforced against and the costs of such abatement invoiced and assessed as set forth in and pursuant to article VI of chapter 42 of the Code. The city may cause the removal of a substandard drainage pipe, or the cleaning or repair of an improperly maintained public drainageway on private property, private drainageway or private drainage pipe, after providing the owner of the real property upon which is located the substandard private drainage pipe, or the improperly maintained drainageway or drainage pipe with notice of the need to abate the nuisance by removing such substandard private drainage pipe or by cleaning or repairing such improperly maintained drainageway or drainage pipe.

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

FORM APPROVED:



Ann DiDonato
Assistant City Attorney

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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