

Date May 6, 2019

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 102-2, 102-126.07 and 102-128, relating to maintenance of the border area, and by adding and enacting new Section 102-3.5 relating to administrative penalties",

which was considered and voted upon under Roll Call No. 19- 0661 of April 22, 2019; again presented.

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

(Second of three required readings)

(Council Communication No. 19-182)

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

★ Roll Call Number  
19-0661

Agenda Item Number  
42

Date April 22, 2019

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 102-2, 102-126.07 and 102-128, relating to maintenance of the border area, and by adding and enacting new Section 102-3.5 relating to administrative penalties",

(Council Communication No. 19-179)

presented.

Moved by Gatto that this ordinance be considered and given first vote for passage; receive and file comments and refer to the City Manager for review and recommendation.

FORM APPROVED:

(First of three required readings)

Ann DiDonato  
Ann DiDonato  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			?


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.

J. M. Frankhu Cownie  
Mayor

Diane Rauh  
City Clerk

<b>COUNCIL COMMUNICATION</b>				
	Number:	<b>19-179</b>	Meeting:	<b>April 22, 2019</b>
	Agenda Item:	<b>42</b>	Roll Call:	<b>19-0661</b>
	Submitted by:	<b>Steven L. Naber, P.E., City Engineer Jonathan A. Gano, P.E., Public Works Director</b>		

**AGENDA HEADING:**

Amending Chapter 102 of the Municipal Code regarding border area maintenance and administrative penalties.

**SYNOPSIS:**

Recommend approval of staff recommendations and the ordinance regarding border maintenance and administrative penalties.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

- At the August 20, 2018 Council Meeting, a citizen requested that the Municipal Code be amended to allow other types of vegetation, such as flowers, within the border area. At that meeting, Council directed staff to review the current Municipal Code and propose changes to allow plantings within the border area. Staff met with the citizen who made the original request as well as neighbors to review the proposed revisions and incorporate any requested changes. The proposed changes to Section 102-2 of the Municipal Code include the allowance of vegetation within the border area with the following exceptions:
  - No noxious weeds allowed (as defined by Iowa Code).
  - Vegetation cannot obstruct sidewalks or roadways.
  - Vegetation cannot block signage.
  - Vegetation cannot interfere with access to utilities or fire hydrants.
  - Turf grass cannot exceed 12-inches in height. Vegetation cannot exceed 3-feet in height. Flower stalks of plants listed in the Municipal Code are exempt from this height requirement.
  - Current vision clearance requirements still apply.
  
- The proposed changes also include a new section providing for the imposition of administrative penalties for violation of Section 102-2 border area maintenance requirements. The penalty amount will be set by City Council resolution following adoption of the proposed amendment.

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

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

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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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 102-2, 102-126.07 and 102-128 relating to maintenance of the border area, and by adding and enacting new Section 102-3.5 relating to administrative penalties.

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 102-2, 102-126.07 and 102-128, relating to maintenance of the border area, and by adding and enacting new Section 102- 3.5 relating to administrative penalties, as follows:

**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 abutting property owner shall not allow any grass, weeds or other plants in the border area to exceed 12 inches in height.~~ 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, 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

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- p. Larkspur
  - q. Marigold
  - r. Zinnia
  - s. Snapdragon
- (4) Only turfgrass less than 12 inches in height, shall be located within five (5) feet of any fire hydrant.
  - (5) All grass, flowers, shrubs, and plants planted by the property owner shall be planted at the property owner's sole risk and cost. The city shall not be required to incur any cost associated with such grass, flowers, shrubs, and plants.
  - (6) In the event the city is required to restore any portion of the border area, such restoration shall be limited to turfgrass only.
  - (7) All grass, flowers, shrubs, and plants planted in the border area shall be subject to all requirements of Chapter 122 of this Code.
  - (8) All grass, flowers, shrubs, and plants 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.
  - (9) The location of said grass, flowers, shrubs, and plants shall not interfere with access to any utilities located and/or operated within the border area. All grass, flowers, shrubs, and plants placed within the border area shall be subject to existing and future utilities within the border area. In the event said grass, flowers, shrubs, and plants are impacted, removed or damaged for the installation, construction, repair, reconstruction, relocation or maintenance of utilities within the border area, the property owner shall be responsible for replanting said grass, flowers, shrubs, and plants at the property owner's sole expense. All damage to utilities resulting from the planting of said grass, flowers, shrubs, and plants shall be at the sole cost of the property owner.
  - (10) Said grass, flowers, shrubs, and plants 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.
  - (11) Said grass, flowers, shrubs, and plants shall not fully or partially obstruct any portion of any signs or traffic control devices.
  - (12) Said grass, flowers, shrubs, and plants shall not grow on or attach to any signs, signposts, or traffic control devices.
  - (13) Wood mulch is allowed in areas where flowers, shrubs, and plants have been intentionally planted.
- (c) The abutting property owner shall keep the border area free of any structures, materials or objects, except grass, ~~naturally occurring plants~~, flowers, shrubs, and plants as allowed herein, 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 that do not constitute a safety hazard, obstruction of view or nuisance.

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**Sec. 102-3.5. Administrative penalties - notice of violations.**

- (a) The director of public works or his or her designated representative or any police officer is authorized to impose an administrative penalty upon any owner or tenant or lessee of any real estate who fails to maintain the border area. The administrative penalty for such violation shall be as provided in the schedule of administrative penalties adopted by the city council by resolution.
- (b) Penalties shall be paid in full within thirty (30) days of the issuance of the notice.
- (c) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to the violator by the director of public works or his or her designated representative or any police officer. Service of the notice may be by regular mail or delivery in person. Such notice shall include:
  - (1) a statement that the violator has a right to an administrative hearing regarding the violation;
  - (2) a statement that the violator may file a written request for hearing as set forth in section 102-126.07. The request of hearing shall stay payment of the administrative penalty until the hearing is decided. If issuance of the notice of violation is upheld, the violator shall have 30 days from issuance of the hearing decision to pay the administrative penalty.

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

- (a) A person to whom a notice of administrative penalty has been issued for violation of sections 102-3, 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. 102-128. Right of city to seek alternative relief.**

The city is not precluded from seeking alternative relief from the court, including an order for abatement or injunctive relief, in the event that the city issues an administrative penalty, a notice of violation, and/or files a municipal infraction for the same violation of this ~~division~~ chapter.

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