

ORDINANCE NO. 14,366

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, and amended by Ordinance No. 14,043, passed January 28, 2002 and Ordinance No. 14,314, passed February 9, 2004, by amending Sections 74-201, 74-202 and 102-660 thereof, relating to gardens and plants on city-owned right-of-way and city property.

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, and amended by Ordinance No. 14,043, passed January 28, 2002 and Ordinance No. 14,314, passed February 9, 2004 is hereby amended by amending Sections 74-201, 74-202 and 102-660 thereof, relating to gardens and plants on city-owned right-of-way and city property, as follows:

**ARTICLE VI. GARDENS AND PLANTS ON
CITY-OWNED RIGHT-OF-WAY AND CITY PROPERTY**

Sec. 74-201. Garden leases.

- (1) Persons or entities desiring to plant or place flowers, plants, or shrubs in a permanent structure on any city right-of-way or city real property shall execute a garden lease which identifies all areas of the proposed planting or placement, and shall abide by the terms of such lease, including insurance and indemnification responsibilities, if any, established by the city risk manager. Persons or entities executing a garden lease shall be exempt from the permit requirements of section 102-660 of this code.
- (2) The garden lease shall be denied if such plantings or placement is likely to create a public danger or nuisance or would be harmful to existing trees, shrubs, flowers, plants or facilities, as determined by the City Engineer.

- (3) For purposes of this article, City right-of-way means the surface and space above and below any public street, boulevard or sidewalk, but does not include the border area as defined in Sec. 102-1 of this code and governed by Sec. 102-2 of this code. (4) Persons or entities desiring to maintain City property that abuts their property or is located on neighboring property shall execute a lease which shall set forth the duties associated with the use of the property.

Sec. 74-202. Administration.

The park and recreation director shall be responsible for the administration of the garden leases. The director of the park and recreation department, or his or her designee, is authorized to execute garden leases on city right-of-way and other city real property on behalf of the city and may delegate any or all of his or her duties under this article.

Sec. 102-660. Persons subject to registration, permitting and licensing.

- (a) Each person who occupies, uses, or seeks to occupy or use the right-of-way or any equipment located in the right-of-way or who has or seeks to have equipment located in any right-of-way shall register with the department. All such registrations shall be filed with the city on or before the registration deadline established by the city council by resolution, notice of which deadline shall be published in advance thereof in a newspaper of general circulation in Polk County. No person may, after the registration deadline, construct, install, repair, remove, or relocate equipment located in any right-of-way or perform any other work on or use any equipment or any part thereof located in any right-of-way, without first being registered with the department. No person shall obstruct or excavate in any street right-of-way without obtaining appropriate permits as required by division 2 of this article.
- (b) No person shall construct a tree well in any right-of-way unless such tree well is shown in an approved site plan and a permit for such has been obtained pursuant to division 2 of this article.
- (c) No person shall construct an irrigation system in any right-of-way unless a permit for such has been obtained pursuant to division 2 of this article.
- (d) No person shall plant a street tree or any ornamental plantings in the right-of-way unless either a permit for

such has been obtained pursuant to chapter 122 of this Code or a garden lease has been obtained pursuant to chapter 74 of this Code. Persons constructing or maintaining tree wells or irrigation systems in the right-of-way or planting or maintaining street trees or ornamental plantings in the right-of-way shall not be deemed to use or occupy the right-of-way for purposes of this division and shall not be required to register such use.

- (e) A person having a franchise from the city for the provision of a utility service shall be required to register as provided in this division, and pay an annual management fee, obtain right-of-way permits and pay right-of-way permit fees to excavate in or obstruct the right-of-way as provided in division 2 of this article. However, if such franchise provides for the payment of a franchise fee, the franchisee shall not be required to pay such annual management fee or permit fees.
- (f) City utilities and enterprises which occupy and use right-of-way for the provision of municipal utility and enterprise services city shall be required to register as provided in this division, and pay annual management fees, obtain right-of-way permits and pay right-of-way permit fees to excavate in or obstruct the right-of-way as provided in division 2 of this article. City work crews and city contractors performing work in the right-of-way on behalf of the city shall be required to obtain right-of-way permits and pay right-of-way permit fees to excavate in or obstruct the right-of-way as provided in division 2 of this article.
- (g) Governmental entities or agencies of the federal government, the state, or the county which occupy and use right-of-way for the provision of communications or utility services for governmental purposes shall be required to comply with the registration requirements of this division, except the insurance and bonding requirements associated therewith. Such governmental entities and agencies shall be required to pay annual management fees and obtain right-of-way permits and pay right-of-way permit fees to excavate in or obstruct the right-of-way as provided in division 2 of this article. Such governmental entities or agencies shall be exempt from the licensing requirements of division 3 of this article.

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

FORM APPROVED:

Emily Gould Chafa, 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. 04-1630), passed by the City Council of said City at a meeting held July 26, 2004 signed by the Mayor on July 26, 2004 and published as provided by law in the Business Record on August 9, 2004 Authorized by Publication Order No. 4374.

Diane Rauh, City Clerk