NO CHANGE FROM PREVIOUS READING

CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

Date: February 17, 2020

ITEM: Amendment to City Code – Amend Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances) to modify the procedures and requirements for Nuisances.

Ordinance: Approval of Second Reading, Waive Third Reading and Adopt in Final Form

FINANCIAL IMPACT: Undetermined.

BACKGROUND: The City of West Des Moines requests an amendment to the noted chapter and sections of Title 4 (Health and Safety Regulations) to amend regulations pertaining to Nuisances.

- Title 4 (Health and Safety Regulations)
  - Chapter 4 (Nuisances), Section 1 (Definitions), Section 3 (Habitual Violator), Section 4 (Nuisances Prohibits; Authority to Abate), Section 5 (Abatement by Administrative Proceedings), Section 6 (Abatement by Administrative Proceedings), Section 7 (Abatement by Municipal Infraction Proceedings), Section 9 (Emergency Abatement Procedure), Section 10 (Municipal Code Hearing Officer)

This amendment adds a provision for habitual violators and updates references to code enforcement officer to community compliance specialist for consistency purposes.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: City Staff recommends the City Council approve the second reading, waive the third reading and adopt in final form the amendment to City Code, Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances).

Lead Staff Member: Bret Hodne, Director of Public Service

STAFF REVIEWS:

Department Director	Bret Hodne, Director of Public Service
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney RDS
Agenda Acceptance	KR

PUBLICATION(S) (if applicable)

Published In	
Date(s) Published	
Letter sent to surrounding property owners	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Community Compliance Subcommittee		
Date Reviewed	1/21/20		
Recommendation	Yes ☒	No ☐	Split ☐

ATTACHMENTS:

Exhibit I Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2019, BY AMENDING TITLE 4, (HEALTH AND SAFETY REGULATIONS), CHAPTER 4, (NUISANCES).

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

SECTION 1. AMENDMENT. Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances), Section 1 (Definitions) is hereby amended by deleting the highlighted strike-thru text and adding the bold italic text in alphabetical order;

~~CODE ENFORCEMENT~~ OFFICER ***COMMUNITY COMPLIANCE SPECIALIST***: The City Manager or any ~~Enforcement Officer~~ ***employee*** designated by the City Manager of the City of West Des Moines to enforce this chapter.

SECTION 2. AMENDMENT. Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances), is hereby amended by adding a new section 4-4-3: Habitual Violator as provided in the bold and italicized text and renumbering subsequent sections accordingly;

4-4-3: HABITUAL VIOLATOR: Any person who is found to have violated this Chapter three or more times within a 12-month period, at any address in the City, shall be deemed to be a habitual violator.

SECTION 3. AMENDMENT. Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances), Section ~~3~~ 4 (Nuisances Prohibited; Authority to Abate) Subsection B and C is hereby amended by deleting the highlighted strike-thru text and adding the bold italic text;

B. The ~~Code Enforcement Officer~~ ***Community Compliance Specialist*** is authorized to abate nuisances in accordance with the procedures set forth in this chapter. Nuisances may be abated by either the administrative abatement process or the Municipal infraction process, as hereinafter provided.

C. The creation, maintenance or keeping of a "nuisance" as defined in this chapter by a responsible party ***or any other violation of this chapter*** is ***punishable as*** a simple misdemeanor ***as provided in section 903.1 of the code of Iowa (2019), or as a municipal infraction pursuant to title 1, chapter 4 of this Code, or otherwise specified by this Chapter***. Police officers, ~~Code Enforcement Officers~~ ***Community Compliance Specialists*** and the Police Chief's designees shall have the authority to issue ~~criminal~~ citations for violations of this chapter, and shall have the discretion to enforce this chapter as a simple misdemeanor, a Municipal infraction, or as an administrative abatement. Each day a nuisance continues constitutes a separate offense and is subject to a separate criminal offense and penalty. ~~Said penalty shall be a scheduled fine of fifty dollar ($50.00) upon the first offense by a person within a twelve (12) month period, a scheduled fine of seventy-five dollars ($75.00) upon a second offense within a twelve (12) month period, and one hundred dollars ($100.00) for a third or subsequent offense by a person within a twelve (12) month period calculated by the date of the offenses.~~ A "responsible party" as defined

in this chapter may be shown to be maintaining or keeping a nuisance on a property for the purpose of this section if the responsible party knows or a reasonable person in the responsible party's position would reasonably know that the condition constituting a nuisance exists on the property. Failure of a responsible party to correct a nuisance within twenty four (24) hours after receipt of a verbal or written notice of the existence of a nuisance by a peace officer or ~~Code Enforcement Officer~~ ***Community Compliance Specialist*** shall be deemed as knowledge of the existence of the nuisance, but is not required to show knowledge.

SECTION 4. <u>AMENDMENT</u>. Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances), Section 4 5 (Notice to Abate; Service), Subsection A is hereby amended by deleting the highlighted strike-thru text and adding the bold italic text;

A. The City Manager, or any ~~Code Enforcement Officer~~ ***Community Compliance Specialist***, is hereby authorized to serve upon the owner or responsible party of the property upon which the nuisance is being maintained, or upon the person or persons causing or maintaining the nuisance, a written notice to abate as prescribed below.

SECTION 5. <u>AMENDMENT</u>. Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances), Section ~~5~~ 6 (Abatement by Administrative Proceedings), Subsection A is hereby amended by deleting the highlighted strike-thru text and adding the bold italic text;

A. Content Of Notice: In the event the ~~Enforcement Officer~~ ***Compliance Specialist*** decides to abate a nuisance administratively, the notice to abate shall include the following information:

1. Description of what constitutes a nuisance, citing the appropriate Code section.

2. Description of the action necessary to abate the nuisance.

3. The order to abate within a specified time period.

4. The notice shall advise that, upon failure to comply with the order to abate, the City shall undertake such abatement and that the cost of abatement may be assessed against the property for collection in the same manner as Property Taxes.

5. The notice shall also advise as to the opportunity for an administrative hearing and that failure to request such a hearing within the time specified in the notice shall constitute a waiver of the right to a hearing and that said notice shall thereafter become a final determination and order to abate.

6. Fees for the administrative hearing shall be ten dollars ($10.00).

SECTION 6. AMENDMENT. Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances), Section 6 7 (Abatement by Municipal Infraction Proceedings), Subsection A and B are hereby amended by deleting the highlighted strike-thru text and adding the bold italic text;

A. Content Of Notice: In the event the ~~enforcement officer~~ ***compliance specialist*** decides to abate a nuisance through the municipal infraction process, the notice to abate shall include the following information:

1. Description of what constitutes a nuisance, citing the appropriate code section.

2. Description of the action necessary to abate the nuisance.

3. The order to abate within a specified time period.

4. Explanation that failure to abate the nuisance within the time specified will result in the issuance of a civil citation charging the owner or responsible party with a municipal infraction.

5. Explanation that each day that a nuisance is permitted to continue constitutes a separate offense.

6. Explanation that upon being found guilty of a municipal infraction, the court is authorized to order abatement, assess the costs of abatement against the property and/or enter them as ajudgment against the defendant, and assess a civil penalty against the defendant.

B. Issuance Of Civil Citation: In the event that the nuisance is not abated as ordered and within the time specified in the notice to abate, the ~~enforcement officer~~ ***compliance specialist*** may issue a civil citation to the property owner or responsible party, charging that person with a municipal infraction. The ~~enforcement officer~~ ***compliance specialist*** may, but shall not be required to, give notice to abate prior to issuance of a civil citation for a repeat offense involving the same property and occurring within one year of a prior violation.

SECTION 7. AMENDMENT. Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances), Section 8 9 (Emergency Abatement Procedure) is hereby amended by deleting the highlighted strike-thru text and adding the bold italic text;

When the ~~enforcement officer~~ ***compliance specialist*** determines that a nuisance exists on a property and the nuisance constitutes an imminent clear and compelling danger to health, safety or welfare of persons or property, the ~~enforcement officer~~ ***compliance specialist*** is authorized to abate or have abated the nuisance without prior notice and opportunity of hearing. The costs of such action may be assessed against the property for collection in the same manner as property tax. However, prior to such assessment, the city shall give a property owner notice by certified mail and the opportunity for an

administrative hearing in accordance with the procedures of section 4-4-~~5~~ ***6*** of this chapter.

SECTION 8. <u>AMENDMENT</u>. Title 4 (Health and Safety Regulations), Chapter 4 (Nuisances), Section ~~9~~ 10 (Municipal Code Hearing Officer), Subsection C is hereby amended by deleting the highlighted strike-thru text and adding the bold italic text;

C. Hearing On Actions, Interpretations, Notices And Orders:

1. Any person affected by any action, interpretation, notice or order which has been issued by a ~~enforcement officer~~ ***compliance specialist*** in connection with the enforcement of this chapter, through the administrative abatement process, may request, and shall be granted, a hearing on the matter before the municipal code hearing officer; provided, that, such a request for a hearing must be in a form of a written petition and must be filed with the city clerk within the following time periods:

   a) where a notice or order was served or mailed pursuant to this chapter, written petition must be filed with the city clerk within seven (7) calendar days; b) where notice or order was published as provided in this chapter, written petition must be filed with the city clerk within seven (7) calendar days after date of last publication; c) where a notice or order was served by posting in a conspicuous place on the property or building deemed a nuisance, a written petition must be filed with the clerk within seven (7) calendar days of the posting of the notice. Any petition so filed shall state the particular section of the ordinance involved and a brief statement of grounds upon which such appeal is taken. Failure to request a hearing and filing a timely petition as prescribed herein shall constitute a waiver of the right to a hearing, and the notice or order shall become a final determination and order.

2. Upon receipt of a timely filed petition, the hearing officer shall set a time and place for such hearing and shall give written notification thereof. Notification shall be given either through personal service or by certified mail, return receipt requested. The notice shall include a statement of the time, place and nature of the hearing.

3. If the petitioner fails to appear at such hearing, the hearing officer may proceed with the hearing and make a decision in the absence of the party.

SECTION 9. <u>REPEALER</u>. All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

SECTION 10. <u>SAVINGS CLAUSE.</u> If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the

validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

SECTION 11. VIOLATIONS AND PENALTIES. Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Title 1, Chapter 4, Sections 1 and 2 of the City Code of the City of West Des Moines, Iowa.

SECTION 12. OTHER REMEDIES. In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

SECTION 13. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed by the City Council on the _____ day of _____, 2020, and approved this _____ day of _____, 2020.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson , City Clerk

The foregoing Ordinance No. _____ was adopted by the Council for the City of West Des Moines, Iowa, on _____, 2020, and was published in the Des Moines Register on __ _____, 2020.

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Ryan T. Jacobson, City Clerk