

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF INDEPENDENCE, IOWA, BY ENACTING A NEW CHAPTER TITLED "RIGHT-OF-WAY OBSTRUCTIONS, ENCROACHMENTS, AND BEAUTIFICATION."**

**SECTION I. CHAPTER ADDED.** The Code of Ordinances of the City of Independence, Iowa, is amended by adding Chapter 142, Right-of-Way Obstructions, Encroachments, and Beautification, which shall read as follows:

**142.01 PURPOSE AND FINDINGS.** The City Council of the City of Independence finds that the public rights-of-way are a valuable public resource held in trust for the benefit of its citizens. The purpose of this Chapter is to protect the public health, safety, and welfare by:

- A. Ensuring the safe and unimpeded passage of vehicular and pedestrian traffic
- B. Preserving the integrity of public infrastructure located within the right-of-way
- C. Preventing the creation of public nuisances and hazardous conditions within the right-of-way
- D. Establishing clear, consistent, and legally defensible standards for abutting property owners who wish to place certain private installations, structures, or plantings within the public right-of-way.

This Chapter is intended to balance the public's right to a safe and open right-of-way with the desire of property owners to enhance the aesthetic appearance of their properties.

**142.02 DEFINITIONS.** For the purposes of this Chapter, the following terms shall have the meanings ascribed to them:

1. **"Abutting Property"** means any real property that shares a common boundary with a public right-of-way.
2. **"Boulevard"** means that portion of the public right-of-way located between the back of the street curb (or the edge of the traveled roadway if no curb is present) and the public sidewalk, or if no sidewalk is present, the property line of the abutting property.
3. **"Breakaway Support"** means a mailbox support post constructed of either a wood post no larger than four (4) inches by four (4) inches in nominal cross-section, or a standard steel or aluminum pipe with a diameter of no more than two (2) inches, which is buried no more than twenty-four (24) inches into the ground and is not embedded in concrete. This is consistent with Federal Highway Administration safety recommendations.
4. **"City"** means the City of Independence, Iowa.

5. **"Encroachment"** means any privately owned structure, object, or planting, except for those plantings permitted under Chapter 151 of the Code, that is constructed, placed, planted or maintained so that it is located wholly or partially within the public right-of-way.
6. **"Junk"** means any singular object, material or item or collection of objects, materials or items including, but not limited to: old or scrap rope, rags, batteries, paper, trash, rubber debris, tires, waste, used or salvaged lumber, packing boxes, or pallets; inoperable, dismantled or scrapped vehicles, machinery, or appliances and their parts; and any upholstered or finished furniture, carpeting, or other household furnishings or equipment designed and intended for indoor usage.
7. **"Major Mailbox Structure"** means any mailbox support structure and its enclosure constructed of brick, stone, masonry, concrete, heavy steel, or any combination of such materials, or any other non-breakaway design that does not conform to the definition of a "Breakaway Support."
8. **"Obstruction"** means any object, material, item, or condition within the public right-of-way that is an impediment, hindrance, or hazard which impedes, opposes, or interferes with the free and safe passage of the public or the performance of official City duties.
9. **"Public Right-of-Way (ROW)"** means the entire area of land dedicated or reserved for public use for streets, alleys, utilities, sidewalks, lighting, and other public improvements, the boundaries of which extend to the property lines of abutting properties, and which includes the traveled roadway, shoulders, ditches, and boulevards, all as more specifically set forth in the various plats establishing said right of ways.
10. **"Vision Triangle"** means the triangular area of property at a street intersection defined by the two intersecting street curb lines and a straight line connecting said curb lines at points thirty (30) feet distant from their point of intersection. At a driveway, it is the triangular area defined by the edge of the driveway, the street curb line, and a straight line connecting points ten (10) feet along both the driveway edge and the curb line from their point of intersection.

#### **142.03 GENERAL PROHIBITION OF OBSTRUCTIONS; MAINTENANCE OF RIGHT-OF-WAY.**

1. **Prohibition.** Except as expressly permitted by this Chapter, it shall be unlawful for any person to place, construct, cause, plant, or maintain any obstruction or encroachment within any public right-of-way in the City.
2. **Maintenance.** Pursuant to Iowa Code §364.12(2)(c), the owner of an abutting property shall be responsible for the routine maintenance of the boulevard and any other portion of the public right-of-way between their property line and the street curb. This maintenance includes, but is not limited to, mowing grass, removing weeds, and clearing litter and

debris. This subsection does not require the property owner to remove diseased trees or dead wood from trees located within the ROW.

**142.04 PERMITTED ENCROACHMENTS BY RIGHT (NO PERMIT REQUIRED).** The following encroachments are permitted within the public right-of-way without the need to obtain a permit, provided said uses are otherwise in compliance with all other applicable standards set forth herein, and other applicable City ordinances and Iowa State Code.

1. **Standard Mailbox Installations.** A curbside mailbox supported by a Breakaway Support, as defined in Section 2 of this Chapter, is permitted, provided it is installed in accordance with all applicable United States Postal Service regulations regarding height, setback, and placement.
2. **Minor Landscaping and Beautification.** The planting and maintenance of flowers, ornamental grasses, and shrubs within the boulevard is permitted, subject to the following strict conditions :
  - A. The total area of all such plantings shall not exceed a cumulative sixty-four (64) square feet per abutting property.
  - B. No planting shall be of a type that grows to a mature height exceeding thirty-six (36) inches above the top of the adjacent street curb.
  - C. No portion of any planting shall be located within the Vision Triangle of any street intersection or driveway.
  - D. No planting or related landscape feature shall be located or maintained in such a manner as to unreasonably obstruct or interfere with the ingress and egress of occupants from legally parked vehicles.
  - E. All plantings must be consistent with the provisions of Chapter 151 of this Code of Ordinances. In the event of a conflict regarding the planting, maintenance, or removal of any woody plant, the provisions of Chapter 151 shall govern.
  - F. All planters, containers, or edging materials used for such plantings shall be of a conventional design and material customarily used for landscape purposes and shall not include prohibited items as defined in Section 142.07.
  - G. The property owner shall be solely responsible for the maintenance of such plantings.
  - H. The property owner assumes all risk for such plantings.

The City shall not be liable for any damage to or destruction of said plantings, or related landscaping items or materials, that occurs during the course of snow removal, utility

maintenance, street repairs, or any other official City operation. No compensation shall be provided by the City for damage to, removal of and/or replacement of such items/materials.

3. **City-Owned Installations.** Nothing in this Chapter shall be construed to limit or prohibit the City of Independence from placing, installing, or maintaining City-owned items, structures, or improvements within the public right-of-way, including but not limited to benches, trash receptacles, signs, public art, streetscape amenities, plantings, planting containers, and utility infrastructure, as may be authorized or deemed necessary by the City Council for a public purpose.

#### **142.05 ENCROACHMENTS REQUIRING A PERMIT.**

1. **Major Mailbox Structures.** No person shall construct, install, reconstruct, or maintain a Major Mailbox Structure, as defined in Section 2 of this Chapter, without first applying for and obtaining a Major Mailbox Structure Permit from the Building Official or their designee.
2. **Other Major Encroachments.** No person shall construct or install any other significant encroachment, including but not limited to retaining walls, underground irrigation systems, or permanent landscape features not otherwise permitted by Section 4, without first obtaining a Right-of-Way Encroachment Permit.

#### **142.06 PERMIT REQUIREMENTS FOR ENCROACHMENTS REQUIRING A PERMIT.**

An application for Encroachments Requiring a Permit, as set forth in Section 142.05 above, shall be subject to the following requirements and conditions, which must be met prior to permit issuance and maintained for the life of the structure.

1. **Application.** The property owner shall submit a complete application to the Building Official on a form provided by the City. The application shall include, at a minimum:
  - A. A scaled site plan showing the precise location and dimensions of the proposed structure, its setback from the curb, and its location relative to property lines, driveways, intersections, sidewalks, and the Vision Triangle.
  - B. Detailed construction plans and specifications, including foundation design, materials to be used, and the dimensions of the proposed structure.
  - C. Proof that Iowa One Call has been notified to locate all underground utilities in the vicinity of the proposed construction.
  - D. Payment of a non-refundable application fee in an amount to be set by resolution of the City Council.
2. **Mandatory Indemnification and Insurance.** As a condition of the permit, the property owner shall:

- A. Execute an Indemnification and Hold-Harmless Agreement, in a form approved by the City Attorney, that releases the City of Independence, its employees, officers, and agents from any and all liability for property damage, personal injury, or death arising from the existence, condition, or collision with the Major Mailbox Structure, or Other Major Encroachment.
  - B. Said agreement shall require the property owner to defend, indemnify, and hold harmless the City from any and all claims, lawsuits, or damages.
  - C. This agreement shall be **executed by the property owner in a form approved by the City Attorney and suitable for recording** with the Buchanan County Recorder against the title of the abutting property and shall be binding on all future owners of the property. **The property owner shall be responsible for all costs associated with recording the agreement.**
3. **Construction and Location Standards.** All Structures requiring a permit shall comply with the following:
- A. No part of the structure or its foundation shall be located within the Vision Triangle of any street intersection or driveway.
  - B. The face of the structure closest to the roadway shall be set back a minimum of six (6) inches from the back of the street curb.
  - C. The structure's foundation shall not be embedded more than twenty-four (24) inches into the ground and shall not interfere with any known public or private utility lines.
  - D. The final design and location must be approved by the Building Official, who may impose additional conditions as necessary to protect public safety and infrastructure.
  - E. **City Not Liable for Damage.** The property owner assumes all risk of damage to the Major Mailbox Structure. The City shall not be liable for any damage caused to a Major Mailbox Structure during snow removal, street maintenance, utility work, or any other City operation. In the event of such damage, any reimbursement from the City, if offered at the City Manager's sole discretion, shall be limited to the actual replacement cost of a standard mailbox and Breakaway Support.

#### **142.07 PROHIBITED ITEMS AND NUISANCES IN THE RIGHT-OF-WAY.**

- 1. **Nuisance.** It is unlawful to create or maintain a nuisance, as defined in Iowa Code Chapter 657, within the public right-of-way.
- 2. **Prohibited Items.** The following items are hereby declared to be nuisances when placed, stored, or maintained within the public right-of-way and are expressly prohibited:

- A. Junk, as defined in Section 2 of this Chapter.
  - B. Inoperable, unlicensed, or junked vehicles, boats, or trailers.
  - C. The use of repurposed or discarded items as planters or landscape decorations. This includes, but is not limited to, toilets, bathtubs, sinks, tires, and household appliances, which are deemed inconsistent with the aesthetic and safety purposes of this Chapter, as well as inconsistent and/or in conflict with the intended use and/or purpose of the ROW for the installation, repair, and maintenance of public and private utilities.
  - D. Garbage, refuse, debris, or any noxious substance.
  - E. Any item, structure, or condition, not specifically mentioned above, found to obstruct or encumber the public right-of-way, or to impair sightlines for vehicular or pedestrian traffic.
3. **Attachments to Public Property.** It shall be unlawful for any person to attach any private object, including but not limited to signs, basketball hoops, or decorative items, to any City-owned utility pole, traffic control sign, or other public structure located within the right-of-way.

#### **142.08 ADMINISTRATION AND ENFORCEMENT.**

1. **Authority.** The Building Official, or their designee, is hereby authorized and directed to administer and enforce all provisions of this Chapter.
2. **Violations and Notice.** If the Building Official determines that a violation of this Chapter exists, they shall serve a written notice of violation upon the owner of the abutting property. The notice shall be served by certified mail or personal service and shall contain:
  - A. A description of the violation.
  - B. The location of the violation.
  - C. The corrective action required to abate the violation.
  - D. A statement that the owner must complete the abatement within thirty (30) days of the date of the notice, or, within that same period, make a written request to the City Clerk for a hearing before the City Council.
3. **Hearing.** If a hearing is requested, the City Council shall hear testimony from the property owner and City staff and shall make a final determination as to whether a violation exists. If the Council finds that a violation exists, it shall order the abatement thereof within a reasonable time tied to the abatement requirements, time of year, and other relevant considerations, but in no event shall the time for abatement exceed thirty (30) days.

4. **Abatement and Cost Recovery.** If the property owner fails to abate the violation as directed and within the time specified, the City may perform the required action to abate the violation, including the removal and disposal of the offending encroachment or nuisance. The City shall keep an accurate account of all costs incurred, including administrative fees. The total cost shall be billed to the property owner. If the bill is not paid within thirty (30) days, the City Clerk shall certify the costs to the Buchanan County Treasurer to be assessed against the property for collection in the same manner as property taxes.
5. **Penalties.** In addition to any abatement action, a violation of this Chapter shall constitute a municipal infraction, punishable by a civil penalty as provided in Chapter 4 of the Code of the City of Independence. Each day that a violation continues shall be considered a separate offense.

**SECTION II. REPEALER.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION III. SEVERABILITY.** If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

**SECTION IV. EFFECTIVE DATE.** This ordinance shall be effective after its passage and publication as required by law.

**PASSED AND APPROVED** by the City Council of Independence, Iowa, on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Brad Bleichner, Mayor of the City of Independence, IA

ATTEST:

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Susi Lampe, IaCMC, IaCFO, Assistant City Manager/City Clerk/Treasurer of the City of Independence, IA

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

I certify that the foregoing was published as Ordinance No. 20\_\_ - \_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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Susi Lampe, IaCMC, IaCFO, Assistant City Manager/City Clerk/Treasurer of the City of Independence, IA