

TITLE 3

PUBLIC WAYS AND PROPERTY

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Title 3 – Public Ways and Property Chapter 1 – Streets and Sidewalks

SECTIONS:

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3-1-1 Definition(s)

- A. "Property owner" means the contract purchaser if there is one of record, otherwise the record holder of legal title as listed on the property records maintained by the Muscatine County Recorder's Office.

(Code of Iowa, Sec. 364.12[1])

3-1-2 Sidewalk Installation and Repair; Right-of-Way Maintenance.

- A. **Permit Required.** No person or entity shall construct or repair any sidewalk upon the streets of the City, unless such person shall first have obtained a permit therefore in accordance with the Schedule of Permit and Licensing Requirements in Appendix B to this Code of Ordinances.
- B. **Specifications.** All sidewalks must be installed and repaired according to all applicable specifications established by the City Engineer.
- C. **New Sidewalks.** In areas of the City where there are no sidewalks, they shall be installed as follows:
 - 1. **New Construction.** New sidewalks shall be installed in accordance with Title 11 of this Code.
 - 2. **Other Areas.** The City Council shall determine the necessity of installing sidewalks in the areas of the City where none exist after holding a public hearing in accordance with the special assessment provisions of the Code of Iowa.
 - 3. **Cost of Installation.** If, as provided elsewhere in this Code of Ordinances, it is determined that a sidewalk should be installed, the abutting property owners shall share the cost of installing new sidewalks with the City of Muscatine in accordance with the special assessment rules and regulations for sidewalks as adopted by the City Council. If no such determination is made, abutting property owners may install a sidewalk at their own expense, as long as the sidewalk conforms to the specifications set by the City Engineer and the permit required has been obtained.

- E. **Duty of Owner to Repair and Maintain.** The abutting property owner shall maintain all public right-of-way located between the edge of the street or curb line and the property line, and shall keep such area in a safe condition free from defects, debris, nuisances, obstructions or any other hazard. The abutting property owner may be liable for damages caused by failure to maintain the public right-of-way located between the edge of the street or curb line and the property line. The abutting property owner shall maintain the sidewalk in a safe condition, in a state of good repair, and free from defects. The abutting property owner may be liable for damages caused by failure to maintain the sidewalk. Notwithstanding the obligations imposed hereunder, the property owner shall in no event remove diseased trees or dead wood or plant, trim, remove or treat any tree or plant material on public right-of-way without first obtaining permission from the City. Maintenance includes, among other things, timely mowing, trimming trees and shrubs and picking up litter.

(Code of Iowa, Sec. 364.12[2c])

- F. **Notice.** The City may serve notice on the abutting property owner, by certified mail to the property owner as shown by the records of the county auditor, requiring the abutting property owner to repair, replace, or reconstruct sidewalks.

(Code of Iowa, Sec. 364.12[2d])

- G. **Costs.** If the abutting property owner does not perform an action required within a reasonable time, the City may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[2e])

3-1-3 Encroaching Steps. No steps from the sidewalk to the first floor above the ground of any building shall hereafter be erected upon any part of the sidewalk.

3-1-4 Snow and Ice Removal. The abutting property owner is responsible for the removal of the natural accumulations of snow and ice from the sidewalks within twenty-four (24) hours of the termination of the last snowfall and may be liable for damages caused by the failure to use reasonable care in the removal of the snow or ice. If a property owner fails to remove snow, ice, or accumulations within a reasonable time after snowfall, the City, after attempting to notify the adjoining property owner, may cause the snow to be removed and may assess the costs against the property owner for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[2b & e])

3-1-5 Commercial Use of Sidewalk in Commercial Zone

A. Permits for Commercial Use:

1. Sidewalk sales. The City Administrator is authorized to issue permits to businesses or business organizations for the temporary use of sidewalks for commercial sales in commercially zoned districts. Such permits shall be limited to the temporary use of sidewalks abutting said business or business organization, and shall be limited to no more than two days for any one permit. All other commercial use of public right-of-way shall be prohibited unless such use is authorized by the City Council, by resolution.

2. It shall be unlawful for any business or business organization to use the public sidewalks in commercially zoned districts for commercial sales promotions without first having obtained a permit from the City Administrator, as provided in this Chapter.

B. **Permit Procedure and Standards for Issuance.** The permit application and issuance procedures set forth in Chapter 3 of this Title, shall govern the permit requirements of Section 3-1-5 of the City Code.

C. **Permit Provisions Shall not Apply to Peddlers or Solicitors.** The permit provisions of this Chapter shall not apply to peddlers or solicitors, as defined in Title 5 Chapter 10 of the City Code of the City of Muscatine.

3-1-6 Outdoor Restaurant Seating License. No person or entity shall operate a restaurant which provides outdoor seating on public property for the purpose of serving food or beverages, without a valid outdoor restaurant seating license.

A. Sidewalk or Street Café Easement Agreements

1. Sidewalk or Street Café is defined as a permitted area within the public right-of-way consisting of tables and chairs where patrons may be served food and/or beverages from an adjacent café or restaurant.

2. No person shall operate a sidewalk or street café without an approved easement agreement.

3. The agreement shall be between the City and the café owner with the approval of the building owner, if different than the café owner.

4. The agreement shall provide that no property right is conferred and that it may be terminated if the City determines that the right-of-way is needed.

5. The agreement shall include provisions for insurance, indemnification, fencing, maintenance, including vegetation and the subsurface if applicable, and any other reasonable provision as determined by the City Administrator, or designee.

6. The agreement shall include a site plan that meets all the requirements of Section 3-1-6 (B)(5)

7. The easement agreement, at a minimum, shall require the café operator to provide a certificate of insurance satisfactory to the City as set out in the Schedule of Permit and Licensing Requirements in Appendix B to this Code of Ordinances, and shall agree to hold the City harmless against any and all liability arising from or relating to the operation of the sidewalk or street café or the location of the café on the public right-of-way including, but not limited to, all claims arising from occurrences or accidents within the sidewalk or street café including the walkway through a café.

8. Easement agreements shall expire on December 31st of the year in which they are issued.

9. Termination of easement agreements

a. After execution of an easement agreement, the City Administrator, or designee, shall retain the right to terminate the easement agreement but only after written notice of violation has been given and the time to cure the violation has expired.

Grounds for termination of the easement agreement shall include, but not be limited to:

- i. Violations of state and liquor control laws,
 - ii. Violations of the easement agreement,
 - iii. Creating a safety hazard, health hazard, and/or public nuisance under state or local law.
- b. The City Administrator, or designee, retains the right to terminate the easement agreement and direct removal of sidewalk or street café operations if there is a substantial and reasonable need for use of the public right-of-way for a valid public purpose.
 - c. The café owner has the right to appeal a decision to terminate the agreement to the City Council.

B. Approval of Easement Agreements

1. Easement Agreements shall be approved by a resolution of City Council.
2. The City is not obligated to approve an easement agreement, even if it meets all criteria contained within this Chapter, and approval will be based on City Council making a determination that the proposed easement agreement is beneficial to the community.
3. City Council may attach any conditions to the approval of an easement agreement that it deems necessary.
4. Application for an easement agreement shall be made upon a form approved and provided by the City of Muscatine, and shall be accompanied by an application fee, as set by resolution of City Council and as set out in the Schedule of Permit and Licensing Requirements in Appendix B to this Code of Ordinances.
5. Site Plan - A dimensioned site plan drawing showing the general layout of the sidewalk or street area and building frontage, including all of the following items if applicable:
 - a. The general layout of the sidewalk or street area and building frontage.
 - b. Street, curb, sidewalk, property lines and all existing/proposed improvements in the sidewalk or street area.
 - c. Boundaries of the sidewalk or street café.
 - d. The distance between the sidewalk or street café and the entrance to any adjacent commercial business.
 - e. The distance between the railing of the sidewalk or street café and the curb.
 - f. The distance between any obstruction (parking meters, lights, signs, mail boxes, trees, tree grates, etc.) in the sidewalk or street area to the railing of the sidewalk or street café.
 - g. Plans must reflect that the direction and extent of swing of gates or other objects placed within the sidewalk or street café area do not project beyond the delineated perimeter of the sidewalk or street café.
 - h. Type of sidewalk or street café enclosure used, such as railings or planters.
 - i. Height of enclosure.
6. Prior to City Council rendering a decision on an easement agreement, the City of Muscatine shall mail all property owners and first floor occupants located on the same block a notice that an application for an easement agreement has been filed. The

notice shall contain the Site Plan submitted by the applicant, state whether or not the business is licensed to serve alcoholic beverages that may be served and consumed at the sidewalk or street café if the permit is granted, and state that all comments concerning the proposed sidewalk or street café must be received by the City of Muscatine within 15 calendar days from the date of mailing the notice. The applicant shall also be required to post a copy of the public notice in a readily visible location on the frontage of the applying business establishment for 15 calendar days.

C. General Provisions

1. Sidewalk or street cafés are only allowed in the area bounded by Pine Street, 6th Street, Mulberry Avenue, and Mississippi Drive.
2. A sidewalk or street café must be arranged in a manner that leaves an unobstructed and continuous walkway of at least five feet (5') on the existing public sidewalk. For a distance of no more than two feet (2'), the width of the required walkway may be reduced to three feet (3'), if this reduction in width is caused by a permanent publicly owned installation such as a utility/light pole, sign pole, parking meter, fire hydrant, or street tree.
3. The outdoor café owner is responsible for trash removal and shall maintain the area and surrounding five feet (5') in a clean and litter free manner during all hours of operation.
4. The easement agreement holder shall be responsible for any damages to the public right-of-way caused by the placement of any anchored fencing.
5. Sidewalk or street cafés are subject to annual inspections and may be inspected at any other time at the City's discretion.
6. All kitchen equipment and refuse containers used to service the sidewalk or street cafés must be located inside the principal building.
7. No extension cords are allowed across sidewalks.
8. Any feature, measure, or structure deemed necessary by the City of Muscatine, as necessary for the safe operation of the sidewalk or street café.
9. Vertical Clear Zone. The clear zone is the area between a height of three feet (3') and seven feet (7'). The vertical clear zone is the area above the sidewalk in which obstructions shall be minimized to provide a clear view.
 - a. Obstruction Prohibited. The vertical clear zone shall be free of obstructions, including but not limited to fences, walls, landscaping, signs, structures, tree canopies or parked vehicles.
 - b. Exemption of Certain Point Obstructions. Certain objects are considered point obstructions and are permitted because a driver can move slightly and be able to see around them. The following objects are permitted within the vertical clear zone:
 - i. Poles with a diameter of less than 1 foot (1').
 - ii. Tables and chairs.
 - iii. Fencing that is not more than 25% opaque.
 - iv. Official traffic control devices.

- v. Utility equipment, such as but not limited to poles, transformers, distribution equipment, etc.
- vi. Trees that are devoid of branches between three feet (3') and seven feet (7') from the ground and that are spaced in manner that minimizes visual obstruction.
- vii. Any obstruction that was permitted by City Code on the date that it was installed.

10. Sidewalk cafés may be located on a platform on top of a public sidewalk if the City Administrator or designee determines there is excessive slope in the sidewalk and approves the design and if suitable access is provided for persons with disabilities.

11. Outdoor cafes located on public streets shall meet the following criteria:

- a. The portion of the café located on the street shall be on a platform. The design features of the platform shall be submitted with the application. The platform shall not impede drainage in the street gutter.
- b. For safety reasons there shall be a minimum four foot (4') buffer on either end of the café and any on-street parking space.
- c. The platform shall include a physical barrier of at least three feet (3') in height on all sides that are adjacent to the street.
- d. The City of Muscatine may require any feature, measure, or structure deemed necessary by the City of Muscatine, as necessary for safe operations.

12. Cafés located on public streets cannot be set up before April 1 and shall be removed no later than October 15.

Easement holders may request authorization to operate before April 1 or after October 15 subject to approval by the City Administrator or his or her designee. Approval of the requested alternate dates are subject to the determination that operation of the sidewalk or street café will not endanger the public or interfere with city operations.

3-1-7 Street Obstructions.

- A. **Unlawful Obstructions.** It is unlawful for any person or entity to in any way obstruct or cause to be obstructed, any street or alley by placing therein or thereon any stone, lumber, brick, wood or other thing or by making or causing to be made any excavation therein or thereon without having first secured written permission from the City to do so.
- B. **Unlawful Deposits.** It is unlawful for any person to throw or deposit on any street or alley any glass bottle, glass, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris or substance likely to injure any person, animal or vehicle.

(Code of Iowa, Sec. 321.369)

C. It is unlawful for any person to deface, alter, or destroy any street or alley in any manner.

(Code of Iowa, Sec. 716.1)

D. **Dumping of Snow.** It shall be unlawful for any person to throw, push or place or cause to be thrown, pushed or placed, any ice or snow from private property, sidewalks or driveways onto the traveled way of streets so as to obstruct gutters or impede the passage of vehicles upon the street or to create a hazardous condition therein; except where, in the cleaning of large commercial drives in the business district, if it is absolutely necessary to move the snow onto the streets temporarily, such accumulation shall be removed within forty-eight (48) hours by the property owner or his agent, and only after first making arrangements for such prompt removal at the owner's cost of the accumulation within a reasonable short time, but no later than 48 hours following the event.

3-1-8 Location of Steps, Cellarways, Spouts. If any person shall erect or cause to be erected in any street or public alley, any step, cellar door, or cellarway more than four feet (4') from the line of the street into the sidewalk or street, or more than three feet (3') from the line in any alley into the same, and if any person shall erect any porch, bulk, jut window, or other encumbrance, or shall so place or cause to be placed any spouts or gutters whereby the passage of any street or alley shall be obstructed, he shall be deemed guilty of a misdemeanor or subject to civil penalty and shall immediately cause such step, cellar door, cellarway, porch, bulk, jut window, or other encumbrances, spouts, and gutters to be removed. Nothing in this Section shall be construed to authorize the use of any part of any street, sidewalk, or alley for the erection of stairs, steps, or other modes of access to the second stories to buildings, or to authorize the enclosure by rail or otherwise of any portion of any sidewalk, street, or alley, or the erection of any railing upon any sidewalk, street, or alley as a means of obtaining access or a passageway to the cellar or basement by occupying part of the sidewalk for that purpose. Such railings already existing, while not hereby legalized, shall not be abated, unless upon the special direction of the Council.

3-1-9 Playing in Streets. It is unlawful for any person to sled or play games on streets or alleys, except in the areas blocked off by the City for such purposes.

(Code of Iowa, Sec. 364.12[2])

3-1-10 Traveling on Barricaded Street or Alley. It is unlawful for any person to travel or operate any vehicle on any street or alley temporarily closed by barricades, lights, signs, or flares placed thereon by the authority or permission of any City official, police officer or member of the Fire Department without having first obtained prior approval from the City.

3-1-11 Removal of Barricades and Warning Lights. It is unlawful for a person to willfully move, remove, throw down, destroy or carry away from any street or alley any lamp, obstruction, guard or other article or things, or extinguish any lamp or other light, erected or placed thereupon for the purpose of guarding or enclosing unsafe or dangerous places in said street or alley without the consent of the person in control thereof.

(Code of Iowa, Sec. 716.1)

Title 3 – Public Ways and Property
Chapter 2 – Use of City Right of Way

SECTIONS:

- 3-2-1 Excavation Compliance
- 3-2-2 Permit Required
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- 3-2-4 Barricades, Fencing and Lighting
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- 3-2-6 Insurance
- 3-2-7 Pre-Construction Conference
- 3-2-8 Commencement Period
- 3-2-9 Steel Tracks; Cleated Equipment
- 3-2-10 Tunneling Under Street
- 3-2-11 Compliance
- 3-2-12 Excavation Material
- 3-2-13 Protect Adjoining Property
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- 3-2-25 Payment Failure after Excavation Repair
- 3-2-26 Emergency Excavations
- 3-2-27 Emergency Detours or Closings
- 3-2-28 Curb Cuts
- 3-2-29 Penalty

3-2-1 Excavation Compliance. No person or entity shall dig, excavate, or in any manner disturb any street, parking or alley except in accordance with the following provisions of this Chapter.

3-2-2 Permit Required. No excavation, including curb cuts, shall be commenced without first obtaining a permit therefor in accordance with the Schedule of Permit and Licensing Requirements in Appendix B to this Code of Ordinances. A written application for such permit shall be filed with the Community Development Department and shall contain the following:

- A. The name and residence of the applicant.
- B. The purpose for which the excavation is to be made.
- C. The name and address of the person for whom the excavation is to be made.
- D. The location of the proposed excavation.
- E. When traffic control devices are used as part of the excavation, the name and telephone number of a person who can be reached twenty-four (24) hours a day, seven (7) days a week.

Exempt. City of Muscatine Public Works employees excavating in the course of employment for the City of Muscatine, or its contractors working under the direct supervision of the City, are exempt from the permit requirements set out in this Section.

3-2-3 Public Convenience. Streets and alleys shall be opened in the manner which will cause the least inconvenience to the public and admit the uninterrupted passage of water along the gutter on the street.

3-2-4 Barricades, Fencing and Lighting. Adequate barricades, fencing and warning lights meeting standards specified by the City shall be so placed as to protect the public from hazard. Any costs incurred by the City in providing or maintaining adequate barricades, fencing or warning lights shall be paid to the City by the permit holder/property owner.

3-2-5 Bond Required. The bond required by this Section shall be set by resolution of Council and is listed in the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances. The bond shall be issued by a surety company authorized to issue such bonds in the State. The bond shall guarantee the permittee's payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of administration of this Section.

3-2-6 Insurance. Each applicant shall also file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the City as additional insured and applicant and all its agents and employees for the amounts set by resolution of Council and specified in the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances.

3-2-7 Pre-Construction Conference. The City may require a pre-construction conference before the issuance of a permit. The conference may involve representatives of the Public Works Department, Police and Fire Departments, City Engineer, utility companies, and the construction agency representative.

3-2-8 Commencement Period. The applicant shall begin the excavation within twenty-four (24) hours of the granting of the permit. Failure to begin excavating within twenty-four (24) hours will cause the permit to become null and void.

3-2-9 Steel Tracks; Cleated Equipment. Under no circumstances shall steel tracked or steel cleated equipment or machinery be permitted on any street, alley, sidewalk, or way unless authorized in writing by the City.

3-2-10 Tunneling Under Street. No person shall tunnel under any street, alley, sidewalk, road, pavement, or way or public place unless authorized in writing by the City Engineer.

3-2-11 Compliance. The applicant shall comply with all excavation and backfill requirements as shall be set forth by the Director of Public Works.

3-2-12 Excavation Material. The person making the excavation shall haul away all excess excavated material. The City may require material to be imported for backfill of any excavation whenever it is evident that backfill is of such nature that it is unsuitable for use. Backfill may be deemed unsuitable by the City if, among other reasons, it is frozen or contains excess moisture or excess debris. Failure of a person making an excavation to backfill the excavation as directed by the City shall be a violation of this Chapter.

3-2-13 Protect Adjoining Property. Any person making an excavation shall at all times and at his own expense preserve and protect from damage or injury all adjoining property of any nature by providing proper foundations, sheeting, bracing, shoring, and drainage, as well as

such other protective measures as may be required. The person making the excavation shall be responsible for all damages to public or private property resulting from or occasioned by the excavation.

3-2-14 Restoration of Public Property. Streets, sidewalks, alleys and other public property disturbed in the course of the work shall be restored to the condition of the property prior to the commencement of the work, or in a manner satisfactory to the City, at the expense of the permit holder/property owner.

3-2-15 Inspection. All work shall be subject to inspection by the City.

3-2-16 Backfill. Upon completion of the work performed under the excavation permit, the applicant shall cause the excavation to be back-filled within twenty-four (24) hours. Backfill shall not be deemed completed, nor resurfacing of any improved street or alley surface begun, until such backfill is inspected and approved by the City. The permit holder/property owner shall provide the City with notice at least twenty-four (24) hours prior to the time when inspection of backfill is desired.

3-2-17 Supervision of Connections and Repairs to Sewers.

- A. All excavations entailing connections, extensions, replacement, or repairs to public sewers in any public place, as well as the connections, extensions, replacement, or repairs themselves, shall be made according to the standards as established by the Director of Public Works, or his or her designee.
- B. All excavations for installation of new sewers shall be made only in conformity with a set of plans which shall have been approved by the Director of Public Works.
- C. Plans are to be submitted to the Director of Public Works by the person, or his agent, who shall desire to have the new sewer constructed, whenever such sewer shall then or thereafter be located in, under, within, or upon any public place.
- D. No person shall hereafter install, lay, bury, place, or replace in or upon any ditch, trench, drainage ditch, driveway, field entrance, or public place any pipe, sewer, drain, water main, culvert, or conduit unless it shall be approved. All sewer pipe materials, fittings, and connections, including sewer service laterals and connections on public property shall be according to standards established by the Director of Public Works or otherwise approved by the Director of Public Works.

3-2-18 Completion by the City. Should any excavation in any street or alley be discontinued or left open and unfinished for a period of twenty-four (24) hours after the approved completion date, or in the event the work is improperly done, the City has the right to finish or correct the excavation work and charge any expenses therefor to the permit holder/property owner.

3-2-19 Responsibility for Costs. All costs and expenses incident to the excavation shall be borne by the property owner/permit holder. The property owner/permit holder shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by such excavation.

3-2-20 Notification. At least forty-eight (48) hours prior to the commencement of the excavation, excluding Saturdays, Sundays and legal holidays, the person performing the excavation shall contact the Statewide Notification Center and provide the center with the information required under Section 480.4 of the Code of Iowa.

3-2-21 Permit Fee. The permit fee required by this Section shall be set by resolution of the City Council, and is listed in the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances.

3-2-22 Permit Issued. Upon approval of the application, filing of bond and insurance certificate, and payment of any required fees, a permit shall be issued.

3-3-23 Permits May be Examined. All permits and written authorizations issued by the City shall at all times be kept by an individual at the excavation site and shall be surrendered for examination upon the demand of any officer of the City.

3-2-24 Save Harmless. The applicant shall agree to hold and save harmless the City, its Agents, Officers, and Employees from any liability or responsibility for damage to any person or property injured by the performance of any excavation work performed by an applicant or by the negligence of the applicant, his employees, or agents in carrying out the excavation permitted under this Chapter.

3-2-25 Pavement Failure after Excavation Repair. If the repaired street surface cracks or subsides more than 1 inch across the excavation within 4 years of the surface replacements, the applicant shall remove the pavement, compact or replace the backfill as required and replace the pavement at no cost to the City.

3-2-26 Emergency Excavations. Emergency excavations are excavations for the repair of such vital utilities as gas, water, sewer, and electricity, which by their nature necessitate immediate action.

3-2-27 Emergency Detours and Closings.

- A. If the emergency occurs during normal office hours, eight o'clock (8:00) A.M. to five o'clock (5:00) P.M. weekdays, the agency doing the work shall first notify the City and obtain approval of said work. The applicant shall obtain the permit in person at the permit office before the close of the next work day.
- B. During normal working hours, emergency detour routes may be requested by telephoning the Department of Public Works.
- C. If the emergency occurs during other than normal working hours, the applicant shall call the Public Safety dispatcher and give the dispatcher the location and nature of the emergency before starting the work. The applicant is then required to get said permit before noon of the next work day.
- D. On other than normal working hours, emergency street closing and detours shall be reported by notifying the dispatcher at the Public Safety Building.

3-2-28 Curb Cuts. No person shall make or cause to be made any curb cut for driveways or any other purpose without first obtaining a curb cut permit from the City and pay a fee in the amount set by resolution of Council and specified in the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances.

- A. Curb cuts shall be made in conformance with the specifications as established by the City.
- B. Curb cut locations shall be established with the assistance of the Director of Public Works to maximize traffic safety.

- C. Curb cuts in the Central Business District (C-2 zoning districts) shall require the approval of the City Council after review and recommendations by the City staff.
- D. Curb cut permits along designated State highways shall be processed through the Iowa Department of Transportation.

3-2-29 Penalty. Any person violating any provision of this Chapter, or failing or neglecting to comply with any requirement, shall be deemed guilty of a separate misdemeanor or civil penalty for each and every day during any part of which such violation or noncompliance occurs. Any person who violates any provision of this Chapter may further be refused any permits until he shall have complied with the provisions of this Chapter. Any incidence of violation of this Chapter shall be cause for the City to immediately revoke or suspend an excavation permit without prejudice to other action on the violation.

Title 3 – Public Ways and Property
Chapter 3 – Parades and Public Assemblies Regulated

SECTIONS:

- 3-3-1 Parades and Public Assemblies Regulated
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- 3-3-3 Permit Required
- 3-3-4 Permit Application
- 3-3-5 Standards for Issuance
- 3-3-6 Hours
- 3-3-7 Permit Fees and Insurance Requirements
- 3-3-8 Parade/ Public Assembly Not a Street Obstruction
- 3-3-9 Control by Police and Firemen
- 3-3-10 Notice and Appeals
- 3-3-11 Alternative Permit
- 3-3-12 Revocation

3-3-1 Parades and Public Assemblies Regulated. No person shall conduct or cause any parade or public assembly as defined herein on any street or public way except as provided below.

3-3-2 Definitions.

- A. "Parade" means any march or procession of twenty-five (25) persons, animals, vehicles or things, or a combination thereof, organized for marching or moving on the streets, sidewalks or other public ways in an organized fashion, or any march or procession of persons, animals, vehicles or things, or a combination thereof, represented or advertised to the public as a parade.
- B. "Public Assembly" means any meeting, demonstration, picket line, rally or gathering of more than twenty five (25) persons on the public right-of-way or one hundred (100) persons in a park for a common purpose as a result of prior planning that interferes with the normal flow or regulation of pedestrian or vehicular traffic on the public right-of-way or in a park or occupies any area in the public right-of-way or in a park.

3-3-3 Permit Required. No parade or public assembly shall be conducted without first obtaining a written permit from the City Administrator.

3-3-4 Permit Application.

- A. A person seeking a parade or assembly permit shall file an application under oath with the City Clerk's office on a form provided by the City Clerk.
- B. **Single, Non-Recurring Parades:** For single, nonrecurring parades or assemblies, an application for a permit shall be filed at least three days and not more than one year before the parade or assembly is proposed to commence. For good cause shown, the City Administrator may waive the three days limit. Good cause shall be shown when the application can be processed in compliance with the provisions of this Chapter in sufficient time to allow the parade or assembly to proceed as scheduled and without hazard to the public safety given due consideration of the date, time, place, anticipated number of participants, and the city services required in connection with the parade or assembly.

- C. **Recurring Parades:** For parades or assemblies held on a regular or recurring basis on a substantially similar route or location, an application for a permit shall be filed at least 60 days and not more than one year before the parade is proposed to commence. For good cause shown, the City Administrator may waive the 60 days limit. Good cause shall be shown when the application can be processed in compliance with the provisions of this Chapter in sufficient time to allow the parade or assembly to proceed as scheduled and without hazard to the public safety given due consideration of the date, time, place, anticipated number of participants, and the city services required in connection with the parade or assembly.
- D. Application Contents:
1. The date and time for the parade or assembly;
 2. The time at which units of the parade will begin to assemble;
 3. The name, address and telephone number of applicant;
 4. The route of the parade or location of assembly; and
 5. The approximate number of persons, animals, and vehicles in the parade or assembly.

3-3-5 Standards for Issuance. The City shall issue the applicant a permit unless:

- A. The City Administrator determines that the time, route or size of the parade or assembly will disrupt the use of any street or sidewalk which is ordinarily subject to significant congestion or traffic;
- B. Another parade or assembly permit has already been issued for that day;
- C. Another parade or assembly permit application for the same time but not location is already granted or has been received and will be granted, and the police resources required for that prior parade or assembly are so great that in combination with the subsequent proposed application, the resulting deployment of police services would have an immediate and adverse effect upon the welfare and safety of persons and property;
- D. The concentration of persons, animals and/or vehicles caused by the parade or assembly will interfere unduly with proper fire and police protection of or ambulance service to areas contiguous to the parade or assembly or other areas of the city;
- E. The proposed parade or assembly will interfere with previously scheduled maintenance or repair work to be carried out on the streets or public ways to be used;
- F. Another event is scheduled elsewhere in the city where the police resources required for that event are so great that the deployment of police services for the proposed parade or assembly would have an immediate and adverse effect upon the welfare and safety of persons and property;
- G. The proposed parade or assembly violates any other governing law or ordinance.

3-3-6 Hours. No permit shall be granted for a parade through a residential district, except during the hours of eight o'clock (8:00) A.M. to eight o'clock (8:00) P.M.

3-3-7 Permit Fees and Insurance Requirements. Fees and insurance requirements for the parade or assembly permit shall be in the amount established by Council and set out in the Schedule of Permit and Licensing Requirements in Appendix B to this Code of Ordinances. The fees under this Section shall not apply to parades or assemblies conducted for the primary purpose of public issue speech protected by the First Amendment of the U.S. Constitution.

3-3-8 Parade/Public Assembly Not A Street Obstruction. Any parade or public assembly for which a permit shall have been issued as herein required and the persons lawfully participating therein shall not be deemed an obstruction of the streets notwithstanding the provisions of any other ordinance to the contrary.

3-3-9 Control by Police and Firemen. Persons participating in any parade or public assembly shall at all times be subject to the lawful orders and directions in the performance of their duties of the members of the police and fire departments.

3-3-10 Notice and Appeals.

- A. The City Administrator will either issue the parade or assembly permit or deny it within 30 days after the application is filed. In the case of applications filed less than 30 days prior to the proposed parade or assembly the City Administrator will act on the application as soon as reasonably practicable but not less than 48 hours prior to the proposed start time of the parade or assembly unless extenuating circumstances prevent notice to be made in that time frame. If denied the notice shall state the reasons for denial. The notice of issuance or denial shall be served by personal delivery, regular or certified mail or in any other fashion reasonably calculated to provide notice to the applicants.
- B. The decision of the City Administrator may be appealed to the City Council by making a request to the City Clerk in writing that the issue of the parade permit's issuance or denial be placed upon the next council meeting agenda. If the Council is not scheduled to meet prior to the proposed parade, then a special council meeting may be called to hear the appeal.
- C. The decision of the City Council shall be based upon the standards contained in Section 3-3-5 and shall be a final determination subject to review in District Court of Muscatine County as may be provided by law. Any party aggrieved by the decision may seek review thereof but in no event later than 30 days after the date of the final determination.

3-3-11 Alternative Permit. The City Administrator, in denying an application for a parade permit, may authorize the conduct of the parade at a date, time, location, or route different from that named by the applicant in consideration of the standards in Section 3-3-5. An applicant desiring to accept an alternate permit shall, within five days after notice of the action of the City Administrator, file a written notice of acceptance with the City Administrator.

An alternate parade permit shall conform to the requirements of, and shall have the effect of, a parade permit issued under this Chapter.

3-3-12 Revocation.

- A. The City Administrator or designee, or the City Council, if issued following an appeal, may revoke a parade/public assembly permit if:
1. It is determined that the permittee has misstated any material fact in the application;
 2. There is a substantial and material variance between the information in the application and the actual facts or those facts which appear reasonably to have occurred;
 3. When it is determined by the chief of police or the fire chief that, by reason of disaster, public calamity, riot or other emergency, the public safety requires such revocation;
 4. The permittee's insurance, if any was required, has been canceled; or
 5. The permittee is operating in violation of the terms and conditions of the permit or local, state, or federal law.

A permit holder may appeal the revocation in the same manner as appealing the issuance or denial of a permit.

Title 3 – Public Ways and Property
Chapter 4 – Public Demonstrations

SECTIONS:

3-4-1 Definitions

3-4-2 Use of Sidewalks for Picketing

3-4-3 Interference with Business or Public Facility

3-4-4 Focused Residential Picketing Prohibited

3-4-6 Duty to Disperse as Directed by Police

3-4-7 Criminal Trespass for Obstruction of Public Ways, Buildings or Property

3-4-1 Definitions. As used in this Chapter, the following definitions shall apply:

- A. Picketeer: A person who engages in picketing with or without signs or placards.
- B. Picketing: The practice of standing, marching, congregating, protesting, demonstrating, or patrolling by one or more persons for the purpose of persuading, discussing, educating, advocating, or informing another person or persons or for the purpose of protesting some action, attitude, policy, or belief. It does not include social, random, or other everyday communication.
- C. Private Residence: A single-family, duplex, or multi-family dwelling.
- D. Public Way: Any public street, alley, roadway, walkway, right-of-way, or any other public way or property designed for vehicular, bicycle or pedestrian travel or congregation, and dedicated to public use.

3-4-2 Picketing on Streets Prohibited Except by Permit. No picketing shall be conducted on that portion of the streets used primarily for vehicular traffic, except as authorized by a permit issued under Chapter 3 of this Title.

3-4-3 Interference with Business or Public Facility. Picketers shall not block or obstruct free passage of any pedestrian or vehicular traffic, or interfere with ingress or egress to any business or public facility.

3-4-4 Focused Residential Picketing Prohibited.

- A. No person or persons shall engage in picketing before or about a residence or dwelling where the picket focuses solely on the residence or dwelling of a particular, identifiable individual.
- B. Nothing herein shall prohibit: 1) the residential picketing of a residence which is used as the occupant's sole place of business; 2) the residential picketing of a private residence used as a public meeting place; 3) a person or group of persons from marching without stopping at a particular private residence; or 4) a person or group of persons from marching on a defined route without stopping at any particular private residence.
- C. Before a person may be cited for violation of this provision, the person must have been ordered to move, disperse, or otherwise remedy the violation by either a police officer or a person with authority to control the use of the private residence which is the focus or target of the residential picketing.

3-4-5 Duty to Disperse as Directed by Police.

- A. Police officers are authorized to disperse persons who are picketing whenever such picketing is in violation of this Title or poses a threat to public health, safety or the orderly flow of vehicular and/or pedestrian traffic.
- B. It shall be unlawful for any person to refuse to disperse or move on when so directed by a police officer, as herein provided.

3-4-6 Criminal Trespass for Obstruction of Public Ways, Buildings or Property.

Whenever the free passage of any street, sidewalk, public way, public building or property in the City of Muscatine is obstructed by picketers and such obstruction continues after a police officer has requested dispersal and removal, such obstruction shall constitute the public offense of criminal trespass.

(Code of Iowa, Section 716.7)

Title 3 – Public Ways and Property

Chapter 5 – Public Parks

SECTIONS:

- 3-5-1 Scope
- 3-5-2 Enforcement
- 3-5-3 Hours of Operation
- 3-5-4 Regulate Activities
- 3-5-5 Amusements
- 3-5-6 Assemblies
- 3-5-7 Permits
- 3-5-8 Traffic
- 3-5-9 Animals
- 3-5-10 Other Regulations

3-5-1 Scope. This Chapter applies to all City parks, greenbelts, and recreational facilities for efficient regulation of conduct in City parks. For the purpose of this Chapter, "Park" includes, but is not limited to, all public parks, trails, greenbelts, and recreational facilities owned by the City of Muscatine, except that the riverfront from Mad Creek to Orange Street extended and from Cedar Street extended to Linn Street extended between Mississippi Drive and the Mississippi River and the roadway known and identified as O'Brien Parkway between Orange and Cedar Streets extended is hereby designated as Riverfront Recreation and Tourism Area. The riverfront from Orange Street extended to Cedar Street extended between the southeasterly edge of the roadway known and identified as O'Brien Parkway and the Mississippi River is designated as Riverside Park.

3-5-2 Enforcement. The Police Department shall assist the Parks and Recreation Department in enforcing all ordinances and regulations relating to all parks and recreational facilities under the City's jurisdiction.

3-5-3 Hours of Operation. The parks, exclusive of the Aquatic Center, and that portion of the Riverfront Recreation and Tourism Area between Mad Creek and Cedar Street extended shall be open daily to the public between the hours of five o'clock (5:00) A.M. and eleven o'clock (11:00) P.M. of any one day. It shall be unlawful for any person to be in said parks and that portion of the Riverfront Recreation and Tourism Area herein designated during any hours in which the parks are not open to the public, except with permission of the Parks and Recreation Department. The Council may by resolution change the hours indicated above.

3-5-4 Regulate Activities. Attendants shall have the authority to regulate the activities in such areas when necessary to prevent congestion and to secure the maximum use for the comfort and convenience of all.

3-5-5 Amusements. No amusement or other events for gain or for which a charge is made shall be conducted in a park without obtaining a permit in accordance with City policy.

3-5-6 Assemblies. No person shall engage in, participate in, aid, form, or organize any assembly or group of people or make any speeches, or conduct any musical program or festival, in any park unless a permit has been obtained in accordance with City policy.

3-5-7 Permits. Applications for park permits shall be filed with the Parks and Recreation Department on the form provided. The City of Muscatine may require the posting of a bond by the permittee in such amount as is necessary to protect the City of Muscatine against loss of and damage to public property and to indemnify against public liability. The permit fee and bond amounts, if any, required by this Section shall be set by resolution of the City Council and listed in the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances.

3-5-8 Traffic. No person in a park shall:

- A. Ride or drive an automobile, motorcycle, moped, mini-bike, go-cart, snowmobile, or other vehicle, except upon the established roads and ways.
- B. Exceed a speed limit of fifteen (15) miles per hour at any time or such lower speed limits as posted in designated areas of the parks.

(Code of Iowa, Sec. 321.236[5])

- C. Fail to obey all posted traffic signs.
- D. Leave a motor vehicle unattended in any park after closing. Any motor vehicle left unattended in any park after closing shall be deemed abandoned and the City of Muscatine shall cause the same to be towed from the Park and the same shall not be redeemed by the owner or the person responsible therefore until reasonable towing and storage charges are paid.
- E. Parking of trucks that are wider than eighty inches (80"), self-propelled motor homes, buses, mobile homes, or any motor vehicle with trailer attached are prohibited in Weed Park from nine o'clock (9:00) A.M. on Friday to eleven o'clock (11:00) P.M. on Sunday.
- F. Operate or park semi-tractors and/or semi-trailers at any time, except when engaged in delivery, pick-up, loading, or unloading equipment and goods as approved by the Department of Parks and Recreation.

3-5-9 Animals. It shall be unlawful to:

- A. Kill, trap, tease, annoy, disturb, or interfere with any animal, bird or other fowl, or fish kept in any Park except as permitted by the City of Muscatine.
- B. Disturb the nest of any bird or any other fowl.
- C. Bring any dangerous animal into any Park.
- D. Permit any dog to be in a park unless such dog is on a leash not more than six feet (6') long.
- E. Permit a horse to be in a park, except in designated areas.
- F. Any unattended animal, or animal not in the designated areas, shall be impounded and its owner may redeem the same upon paying the reasonable costs of such impoundment.

3-5-10 Other Regulations. It shall be unlawful to:

- A. Operate radio controlled equipment in the Parks, except as authorized by the Parks and Recreation Department.
- B. Move benches, seats, and tables from their places, except on picnic grounds within designated areas.
- C. Loiter in any Park workshop or interfere with any Park employee performing his or her duties.
- D. Willfully mark, deface, disfigure, injure, tamper with, displace, or remove any building, bridge, table, bench, fireplace, railing, paving or paving material, waterline or other public utility or part thereof, sign, notice or placard, whether temporary or permanent, monument, stake, post, or other boundary marker, or other structure or equipment, facility, park property, or appurtenance whatsoever, either real or personal.
- E. Throw discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, or other body of water in or adjacent to any park, any substance, matter of thing, liquid, or solid which will or may result in the pollution of said waters.
- F. Bring in or dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, refuse, or other trash. No such refuse or trash shall be left anywhere on the grounds, but shall be placed in the proper receptacles where these are provided; where receptacles are not provided, such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.
- G. Pick or cut, break, or in any way injure or deface any tree, shrub, or plant; remove any wildflower, flower, tree, shrub, plant, or any soil or material of any kind; dig in or otherwise disturb grass areas; or in any other way injure or impair the natural beauty or usefulness of any park area.
- H. Light or make use of any fire in the parks, except such portions thereof as may be designated by the Parks and Recreation Department for such purpose.
- I. Post, paste, fasten, paint, or affix any placard, bill, notice, or sign upon any structure, tree, stone, fence, or enclosure, unless approved by the Parks and Recreation Department and provided such is not in violation of the City's sign ordinance.
- J. Distribute, cast, throw, or place any handbill, pamphlet, circular, advertisement, or notice of any kind for commercial purposes without approval.
- K. Sell or offer for sale any article or service without a permit as required by the City of Muscatine.
- L. Beg or solicit alms.
- M. Carry any firearms, air or pellet guns, bows and arrows, rockets, weapons, firecrackers, fireworks, or other explosives, except as permitted by the City of Muscatine.

- N. Carry, possess, drink alcoholic beverages, including beer, except at the Municipal Golf Course and special events at the riverfront from Mad Creek to Linn Street extended between Mississippi Drive and the Mississippi River, when a permit has been issued by the City Council pursuant to Title 5, Chapter 1 of the City Code.
- O. Possess, use, or transfer any controlled substance.
- P. Disturb the peace.
- Q. Endanger the safety of any person by any conduct or act.
- R. Swim, bathe, or wade in any waters or waterways in or adjacent to any park, except in such waters and at such places as are provided therefore and in compliance with such regulations as are permitted by the City of Muscatine.
- S. Fish in the lagoon, unless such person is age fourteen (14) or under.

Title 3 - Public Ways and Property
Chapter 6 - City Cemeteries

SECTIONS:

- 3-6-1 Scope
- 3-6-2 Trusteeship
- 3-6-3 Records
- 3-6-4 Sale of Interment Rights
- 3-6-5 Rules and Regulations
- 3-6-6 Perpetual Care

3-6-1 Scope. This Chapter applies to all City owned Cemeteries to provide for the efficient regulations and operations of the City Cemeteries.

3-6-2 Trusteeship. Pursuant to Section 523I.502 of the Code of Iowa, the City Council hereby states its willingness and intention to act as the trustee for the perpetual maintenance of the cemetery property.

(Code of Iowa, Sec. 523I.502)

3-6-3 Records. It is the duty of the Clerk to make and keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

(Code of Iowa, Sec. 523I.311)

- A. Sales or Transfers of Interment Rights.
 - 1. The name and last known address of each owner or previous owner of interment rights.
 - 2. The date of each purchase or transfer of interment rights.
 - 3. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.
- B. Interments.
 - 1. The date the remains are interred.
 - 2. The name, date of birth and date of death of the decedent interred, if those facts can be conveniently obtained.
 - 3. A unique numeric or alphanumeric identifier that identifies the location of each interment space where the remains are interred.

3-6-4 Sale of Interment Rights. The sale or transfer of interment rights in the cemetery shall be evidenced by a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price. The agreement for interment rights shall disclose all information required by Chapter 523I of the Code of Iowa. The payment of all fees and charges shall be made at the City Cemetery's office where receipts will be issued for all amounts paid. Said fees and charges shall be based upon the charges as established by the Council.

(Code of Iowa, Sec. 523I.310)

3-6-5 Rules and Regulations. The rules and regulations for the cemetery shall be adopted, and may be amended from time to time, by resolution of the Council and shall cover the hours of opening and closing, the use of roads within the cemetery, the hours for burials, the decorating of graves, the fees for services rendered in connection with interments or the placing of markers and the cost of lots or payments for perpetual care as deemed necessary. The rules shall specify the cemetery's obligations in the event that interment spaces, memorials or memorializations are damaged or defaced by acts of vandalism.

(Code of Iowa, Sec. 523I.304)

3-6-6 Perpetual Care. The Council shall accept, receive and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of interment space sales or permanent charges made against interment spaces which has been set aside in a perpetual care fund. The assets of the perpetual care fund shall be invested in accordance with State law. The Council shall provide for the payment of interest annually to the appropriate fund to be used in caring for or maintaining the individual property of the donor in the cemetery, or interment spaces which have been sold with provisions for perpetual care, all in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of an interment space and Chapter 523I of the Code of Iowa.

(Code of Iowa, Sec. 523I.503, 523I.507 & 523I.508)

Title 3- Public Ways and Property
Chapter 7- Railroads

SECTIONS:

3-7-1 Definitions

3-7-2 Warning Signals

3-7-3 Obstructing Streets

3-7-4 Crossing Maintenance

3-7-1 Definitions. For use in this Chapter, the following terms are defined:

- A. "Operator" means any individual, partnership, corporation or other association which owns, operates, drives, or controls a railroad train.
- B. "Railroad train" means an engine or locomotive, with or without cars coupled thereto, operated upon rails.

(Code of Iowa, Sec. 321.1)

3-7-2 Warning Signals. Operators shall sound a horn at least 1,000 feet before a street crossing is reached and after sounding the horn, shall ring the bell continuously until the crossing is passed.

(Code of Iowa, Sec. 327G.13)

3-7-3 Obstructing Streets. Operators shall not operate any train in such a manner as to prevent vehicular use of any highway, street, or alley for a period of time in excess of ten (10) minutes except:

(Code of Iowa, Sec. 327G.32)

- A. Comply with Signals. When necessary to comply with signals affecting the safety of the movement of trains.
- B. Avoid Striking. When necessary to avoid striking any object or person on the track.
- C. Disabled. When the train is disabled.
- D. Safety Regulations. When necessary to comply with governmental safety regulations including, but not limited to, speed ordinances and speed regulations.
- E. In Motion. When the train is in motion except while engaged in switching operations.
- F. No Traffic. When there is no vehicular traffic waiting to use the crossing.

An employee is not guilty of a violation of this Section if the employee's action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. Guilt is then with the railroad corporation.

3-7-4 Crossing Maintenance. Operators shall construct and maintain good, sufficient, and safe crossings over any street traversed by their rails.

(Bourett vs. Chicago & N.W. Ry. 152 Iowa 579, 132 N.W. 973 [1943])
(Code of Iowa, Sec. 364.11)

Title 3 - Public Ways and Property Chapter 8 - Levees

SECTIONS:

- 3-8-1 Permit Required
- 3-8-2 Application
- 3-8-3 Fees
- 3-8-4 Approval of Use
- 3-8-5 New Permit
- 3-8-6 Injuring or Diverting - Damages
- 3-8-7 Anchoring, Mooring or Tying-up Along Riverbank
- 3-8-8 Penalty

3-8-1 Permit Required. No person shall build upon, alter, deface, destroy, move, injure, or obstruct by fastening vessels thereto or otherwise or in any manner whatsoever use or occupy the Mississippi or Mad Creek levees lying within the city limits, without having first received a permit from the City in accordance with the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances.

3-8-2 Application. Application for a permit to use or occupy the Mississippi or Mad Creek levees shall be in writing and shall describe in detail the use to which the levee is to be put, type of structure to be placed thereon, and the time the applicant intends to occupy or use such levee.

3-8-3 Fees. A permit to use or otherwise occupy the Mississippi or Mad Creek levees and the riverfront may be granted by the City Council to any person upon the payment of such sum as set by resolution of Council and is listed in the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances.

3-8-4 Approval of Use. A permit to use or occupy the Mississippi or Mad Creek levees shall only be issued after the City Council has been satisfied that the use of such levee by the applicant will not in any way impair the levee and will not interfere with the general public use of the levee.

3-8-5 New Permit. No person who has secured a permit to use or occupy the Mississippi or Mad Creek levees shall change or alter his occupancy or use of the levee without having first secured a new permit showing the alteration intended by him, which permit shall be granted by the City Council after it is satisfied that the use or occupancy of the levee will not be impaired, upon the payment of such sum as may be deemed proper.

3-8-6 Injuring or Diverting - Damages. Any person who shall willfully break down or through or injure any levee or bank of a settling basin, or who shall dam up, divert, obstruct, or willfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person, he shall be liable in treble the amount of such damages.

3-8-7 Anchoring, Mooring or Tying-up Along Riverbank. No person shall anchor, moor or tie-up along the right bank of the Mississippi River between Mad Creek and Pine Street, both extended to the right edge of the channel of the river, any towboat, barge, excursion boat, commercial boat, or any other boat or vessel without the permission of the City acting through the City Administrator or designee of the City Administrator.

3-8-8 Penalty. Any person who violates any Section of this Chapter shall be deemed guilty of a municipal infraction and subject to a civil penalty as provided in Title 1 Chapter 3 of this Code of Ordinances.

Title 3 – Public Ways and Property
Chapter 9 – Trees and Shrubs

SECTIONS:

- 3-9-1 Removal and Trimming of Dangerous Tree; Compliance
- 3-9-2 Abutting Property Owners
- 3-9-3 Notice to Trim; Failure to Comply
- 3-9-4 Trimming by City; Recovery of Cost
- 3-9-5 Liability Insurance; Tree Removal
- 3-9-6 Obstructing Streets; Barricades
- 3-9-7 Removal of Debris
- 3-9-8 Street Trees (Existing)
- 3-9-9 Street Trees (New)
- 3-9-10 New Street Trees (City Program)
- 3-9-11 Injuring; Defacing; Removing
- 3-9-12 Reserved

3-9-1 Removal and Trimming of Dangerous Tree; Compliance.

- A. If the City deems any shade, ornamental, or other tree situated on private property in the City to be diseased or dead, it shall cause to be served a notice upon the owner, in accordance with the most recently enacted Code of Iowa, if known within the City, or if not, then upon the occupant of the lot, to cut down such tree and remove the same and all debris therefrom. Said tree and debris shall be hauled to an area designated or approved by the City and/or the Iowa Department of Water, Air, and Waste Management.

(Code of Iowa, Section 364.12[2][c])

- B. If such notice is not complied with within ten (10) days, the City shall cause such tree to be cut down or removed and the cost of cutting down and removing it shall be certified to the County Treasurer and be assessed against the real estate in the same manner as a property tax.

(Code of Iowa, Section 364.12[2][e])

- C. All diseased trees shall be sprayed, if required by the City, at the site of their cutting down or removal before being hauled or transported through the City to an approved disposal site.

(Code of Iowa, Section 364.12[2][c])

- D. The General Manager of any utility shall have the authority to trim any tree which interferes with utility property and equipment, after notification and approval by the City.

- E. The City shall have authority to trim any tree, located on private property, which interferes with the proper distribution of light from street lights or signs following notification to the property owner in accordance with Sections 3-9-3 and 3-9-4 of this Chapter.

3-9-2 Abutting Property Owners. Any person owning any real estate within the City with trees located upon said real estate or located in the street right-of-way (including parking) adjacent to said real estate, shall trim such trees in such manner that no overhanging branches thereof shall in any way obstruct any such street or sidewalk below the height of ten feet (10') above the surface of the sidewalk and fourteen feet (14') from the surface of the street.

(Code of Iowa, Section 364.12[2][c])

3-9-3 Notice to Trim; Failure to Comply. Any person or owner of property as described in this Chapter who shall have been served by the City with a notice by Certified Mail, and shall not comply with the notice within ten (10) days of the receipt of the notice, shall be guilty of a misdemeanor and subject to penalty as provided in the Schedule of Penalties in Appendix A to this Code of Ordinances.

3-9-4 Trimming by City; Recovery of Cost. When the owner or occupant of real property in the City having trees upon or in front of the same, the branches of which overhang the street or any part thereof, and having had notice to trim the same and fails or refuses to comply therewith for more than ten (10) days after service of notice, then it shall be lawful for the City to trim such trees to the height provided in Section 3-9-2 of this Chapter and certify the cost of the same to the County Treasurer to be assessed against the real estate in the same manner as a property tax.

(Code of Iowa, Section 364.12[2][e])

3-9-5 Liability Insurance; Tree Removal. All persons and/or corporations engaged in removal of trees within the City right-of-way shall obtain a license therefor. The licensee must pay the fee and present a copy of an insurance policy for liability insurance in the amounts set by resolution of the City Council and listed in the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances.

3-9-6 Obstructing Streets; Barricades.

- A. Before any street or thoroughfare can be shut off or blocked in any way for tree removal, permission must be granted by the City.
- B. Streets when barricaded or shut off must be barricaded by proper barricades appropriately marked and readily seen by all.
- C. All persons, and/or corporations barricading any street or thoroughfare for the purpose of trimming or removing any tree shall first notify the City of Muscatine Police and Fire Departments stating the location and time period that such street or thoroughfare will be closed.
- D. No street or thoroughfare shall be closed for the purpose of removing any tree unless the required permit is secured as provided in this Chapter.

3-9-7 Removal of Debris. Removal of debris, stumps, logs, etc. shall be made upon or in trucks and no hauling shall be allowed hanging from outside by booms or dragging from such vehicle.

3-9-8 Street Trees (Existing).

- A. All existing trees located within the public right-of-way as of the effective date of this Section shall be the responsibility of the adjacent property owner.
 - a. Exception. Any street tree which is diseased, dead, or otherwise poses an immediate threat to the public health and welfare shall be the responsibility of the City.

(Code of Iowa, Section 364.12[2][c])

- B. It shall be the duty and right of the adjacent property owner to trim, remove, treat, or otherwise maintain all existing street trees in a manner that promotes the public health, safety, and welfare and in accordance with the provisions of this Chapter.

(Code of Iowa, Section 364.12[2][c])

- C. Any person or corporation removing any existing street tree shall obtain a permit to do so from the City in accordance with the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances for the purpose of maintaining a citywide inventory. The Tree Removal Permit shall be provided at no charge to the applicant.
- D. Nothing contained in this Chapter shall be construed so as to prevent the immediate removal and/or trimming by officers of the City of any tree from the streets, when in the judgment of the City, such removal or trimming is necessary for the purpose of making street improvements or to eliminate obstructions of public signs which, by design, promote safety of persons or property.

3-9-9 Street Trees (New).

- A. As of the effective date of this Section, all proposals to plant trees in the public right-of-way shall require a permit from the City in accordance the Schedule of Permit and Licensing Requirements contained in Appendix B to this Code of Ordinances.
- B. The permit application provided by the City shall state the applicant's name, address, type of tree to be planted, exact location, and any additional information that may be needed by the City to determine whether the application should or should not be approved.
- C. The application shall be recommended for approval or disapproval by the City prior to issuance. Failure to secure a positive recommendation by the City shall constitute a denial of the application.
- D. Permit Requirements:
 - 1. The permit shall state that the applicant agrees to plant the street tree(s) in accordance with the requirements of this Chapter.
 - 2. The permit shall state that the applicant will plant a specific type of tree which shall be an approved species for street trees; a list of which shall be provided to the applicant upon request.

3. The permit shall state that once the street tree is planted, it becomes the property of the City of Muscatine and the applicant agrees to relinquish all interest in said tree. The permit shall state that the owner agrees to donate the tree to the City, at the applicant's expense, and that the applicant agrees to adhere to the provisions of Title 3, Chapter 9, Section 8 of this Code.
4. The permit shall include a provision which indemnifies the City from any and all claims for damage to private and public property as a result of the permit to plant a street tree.

3-9-10 New Street Trees (City Program).

- A. The City may, at its discretion and with the approval of the City Council, initiate a program for the purpose of planting, maintaining, trimming, and removal of new street trees.
- B. It shall be the policy of the City to notify abutting property owners before planting any street tree in front of any residential structure in the City.
- C. The owner of the abutting property shall be required to sign a permit in accordance with Chapter 9, except the tree will be planted by the City at no expense to the abutting residential property owner.

3-9-11 Injuring; Defacing; Removing. Any person who shall willfully, maliciously, or negligently, in any manner, injure, deface, remove, or destroy any street tree or boxing placed around the same, or any shrub upon any public grounds and right of ways shall be deemed guilty of a misdemeanor, and shall reimburse the City for any costs incurred by such action if directed to do so by the Iowa District Court for Muscatine County.