

Posting Date: August 19, 2016

**NOTICE OF A SPECIAL MEETING
BONDURANT CITY COUNCIL
AUGUST 22, 2016**

NOTICE IS HEREBY GIVEN that a Special Meeting of the City Council will be held at 6:00 p.m. on Monday, August 22, 2016, in the Bondurant City Center, 200 Second Street, Northeast, Bondurant, Polk County, Iowa. Said meeting is open and the public is encouraged to attend.

AGENDA

1. Roll Call
2. Call to Order and Declaring a Quorum
3. Perfecting and Approval of the Agenda
4. Discussion Items –
 - a. Encroachment Policy
5. Adjournment

City Council Meetings:

- Regular Meeting, September 6, 2016 (Tuesday)
- Regular Meeting, September 19, 2016
- Regular Meeting, October 3, 2016
- Regular Meeting, October 17, 2016

The Bondurant City Council maintains the right to waive the first and second readings of ordinances presented and may pass the third and final reading of the same ordinance within the same council meeting.

Shelby Hagan

From: Mark Arentsen [marentsen@cityofbondurant.com]
Sent: Friday, August 19, 2016 2:24 PM
To: csullivan@cityofbondurant.com; 'Brian Lohse'; Wes Enos; 'Bob Pepper'; jkeeler@cityofbondurant.com; delrod@cityofbondurant.com
Cc: 'Shelby Hagan'; 'David Brick'
Subject: Encroachment Policy
Attachments: SKM_C454e16081914230.pdf

The recommended Encroachment Policy is attached. The Park & Recreation Board reviewed this at their meeting last night. They are in support of the City regulating encroachments. I suggested that the City establish a permit process for encroachments. They were in agreement with that. They were in agreement that some mowing is ok. They asked if existing encroachments would be allowed to continue. I said that it would be my suggestion that the City try to document and photograph existing encroachments. Existing encroachments would need to go through the permit process. It would be some work to accomplish that but that way no one gets a "free" encroachment. We've run into cases in the past with fence permits in which someone complains that they should be able to have the same fence someone else has that's not in compliance with the ordinance. There were a number of fences built prior to 2006 that are not in compliance with the existing ordinance. I don't know how those happened or if the ordinance was changed after those were built, but it's created a problem occasionally trying to enforce the fence code.

Attached are the existing Polk County Conservation Encroachment Policy, the 6/15/16 Bondurant draft and an 8/19/16 Bondurant draft. The 8/19 draft was done after the Park Board meeting last night. The italicized print is new language in the 8/19 draft. The differences between the 6/15 and 8/19 drafts are;

1. The City Council, not the City Administrator approves the permits. I'm personally ok with the City Administrator approving them, but I can see situations in which people are unhappy with the City Administrator's decision or the City Council is unhappy with either the City Administrator's decision or the way in which a particular request was handled. If the approval process is through the City Administrator, an appeal to the City Council should be made possible if someone doesn't like the City Administrator's decision. This arrangement will be more work for the City Council especially at the beginning if existing encroachments aren't grandfathered in.
2. The time for removing unapproved encroachments is reduced from 90 days to 30 days.
3. Mowing beyond the property line is increased from a 2' width to 5'. If the permit system is adopted, mowing beyond 5' would require a permit.

City Attorney David Brick is included on this e-mail. I haven't reviewed this issue with him.

Mark Arentsen

City Administrator

City of Bondurant, Pop. 5,493

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Polk County Conservation Encroachment Policy

DRAFT 5/9/2016

Purpose and Intent

The Polk County Conservation Board (PCCB) encourages public and homeowner support to the shared end goal of protecting and preserving the land that is entrusted to the PCCB by the public. PCCB's mission is to: ***provide the citizens of Polk County with quality outdoor recreation, conservation education, and long term protection of Polk County's natural heritage.*** The PCCB seeks to be a good neighbor to private property owners adjacent to our parks, trails and greenways, and expects the same consideration in return. If there is a dispute between neighbors, every reasonable effort will be made to review and resolve the situation prior to resorting to formal legal action.

Protection of public lands includes but is not limited to protection of the natural environment, animal habitat (food and shelter) and public access/enjoyment. Where public and private land intersect, public lands must be unencumbered by private or commercial uses that have negative impacts on the environment or interfere with or limit public access, use or enjoyment of the land. The purpose and intent of this policy is to protect and preserve all real property owned and managed by PCCB from unauthorized land use. Consideration regarding encroachments shall address land, water and habitat protection, public access, enjoyment, safety, and health concerns, and protection of the general health and welfare of the users of PCCB-managed lands.

Policy

Encroachment onto public lands is a form of trespass and erection of structures or modifications to natural areas are encroachments into public lands that have been set aside for natural resource restoration and/or public use. The PCCB prohibits the unauthorized placement of natural or manmade materials on or within PCCB managed property, the unauthorized construction or placement of any structures or other "improvements" on or within PCCB property, and the unauthorized alteration of PCCB property in anyway (hereafter referred to as "Encroachment").

Examples of encroachment include, but are not limited to, the following:

- Placing any refuse or trash, on public lands, including unauthorized placing of "natural" or biodegradable waste such as compost, grass or tree clippings, stumps, yard waste and animal waste;
- Building or placing unauthorized structures such as decks, fences, walls, fire pits, storage buildings and paver patios;
- Storing personal items such as grills, picnic tables or other lawn furniture;
- Installing personal gardens, flower beds, trees and other vegetation, or modifying existing vegetation, including the mowing of grass;
- Applying pesticide, herbicide or other unauthorized chemicals on or within PCCB property;

- Placing pipes or trenches that redirect natural water drainage and force it into PCCB property from downspouts, sump pumps, or detention ponds on or within PCCB property.

Procedure:

Upon discovery of an encroachment, staff shall investigate and recommend appropriate action to PCCB Administration. If it is determined by PCCB that the encroachment requires corrective action, the property owner will be notified, and every reasonable effort will be made to resolve the situation prior to resorting to formal legal action. If informal action does not resolve the issue, the property owner shall be notified in writing and directed to remove the unauthorized encroachment within 90 days. The property owner may submit a written request for an extension that the PCCB Director is authorized to approve.

In the event that the property boundary is disputed, a boundary survey may be requested by the encroaching party and performed by a licensed and qualified surveyor. Cost for surveys shall be paid by the encroaching land owner if it is determined that there is an encroachment upon PCCB property without authorization. The County shall reimburse the property owner for any boundary survey where it is determined that no encroachment has occurred.

Costs to Resolve Unauthorized Encroachments:

Failure of the property owner to remove the encroachment within 90 days, or after a granted extension, shall result in PCCB removing the encroachment and restoring the property to its original condition.

In this situation, the violator shall be assessed the actual costs for removal and restoration of the encroached upon area.

If the violator fails to meet their financial obligation, County staff may pursue any and all legal options available for recovery of all actual costs for such efforts. Such costs may include, but are not limited to, the following:

- Salary and benefits of all employees performing work on the encroached upon areas;
- Equipment usage fees
- Boundary surveys;
- Construction permit engineering or architectural fees;
- Demolition, removal, disposal and restoration fees;
- Legal fees;
- Dumping fees;
- A five-percent administrative fee; and
- Accrued interest if payment is not received within 30 days of invoicing.

Appeals:

Individuals may appeal encroachment decisions to the PCCB for consideration. Written requests for an accommodation must be received within 30 days of receipt of the written notice of unauthorized encroachment.

Urban Exceptions:

In order to maintain property lines, private property owners in urban areas may mow a 48" path along the property line boundary on PCCB land with approval of PCCB Administration. Urban areas are defined as residential development areas with individual property boundaries that are less than 300 feet in length and where the predominant property-types bordering PCCB managed lands are single/multi-family dwelling homes.

Rural Exceptions:

In order to provide access to farmland adjacent to or bisecting PCCB managed lands or trails, the PCCB may issue a permit to the bordering landowner. The permit shall identify the agreed upon access needs, buffer zone (distance, vegetation, etc.), visual triangles related to access/road/trail crossings, tile lines, responsible party and any safety concerns identified by either party. Due to various environmental impacts, the following minimum buffer-zone distances shall be utilized by PCCB along trails with the ability to utilize the entire easement area as needed.

Function	Buffer Zone Width/Use
Bank Stability	30 feet (vegetative plantings)
Sediment and soil bound nutrients	50 feet (vegetative plantings)
Terrestrial wildlife habitat	50 feet (vegetative plantings)
Trails (wildlife habitat, screening, wind block)	30 feet (trees, shrubs, prairie, grass plantings)

Other Exceptions:

Other exceptions to the policy may be granted by the PCCB Director and reported to the Board at their first available meeting only when encroachments are deemed to be in the overall Agency's best interest. Every request for accommodation shall be evaluated individually and on its own merit, and may be denied for any reason deemed appropriate by the Director.

If PCCB encroaches upon private property (tree roots), the property owner may contact PCCB to have the situation evaluated by PCCB, with any action taken based on the laws of the State of Iowa. If tree branches encroach onto private property, the owner may trim the tree up to the property line at their expense as based on Iowa law.

This policy does not apply to authorized uses approved by the PCCB pursuant to licenses, easements or permits.

Referenced Code Sections

461A.35 Prohibited Destructive Acts.

It shall be unlawful for any person to use, enjoy the privileges of, destroy, injure or deface plant life, or to construct or operate for private or commercial purposes any structure, or to remove any plant life, trees buildings, sand gravel, ice, earth, stone, wood or other natural material, or to operate vehicles, within the boundaries of any state park, preserve, or stream or any other lands or waters under the jurisdiction of the commission for any purpose whatsoever, except upon the terms, conditions, limitations and restrictions as set forth by the commission.

350.10 Statutes Applicable.

Sections 461A.35 through 461A.57 apply to all lands and waters under control of a county conservation board, in the same manner as if the lands and waters were state parks, lands or waters. As used in sections 461A.35 through 461A.57, "*natural resource commission*" includes county conservation board, and "*director*" includes a county conservation board or its director, with respect to lands or waters under control of a county conservation board. However, sections 461A.35 through 461A.57 may be modified or superseded by rules adopted as provided in section 350.5.

16 USC 1247 (d) The National Trails System Act.

The Secretary of Transportation, the Chairman of the Interstate Commerce Commission, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with the National Trails System Act, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Commission shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this Act, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

Approved:

Draft #1

CITY OF BONDURANT ENCROACHMENT POLICY

JUNE 15, 2016

Purpose and Intent

The City of Bondurant desires to maintain a harmonious relationship with property owners adjacent to City property while protecting the City's authority to control uses occurring on City property. The City seeks to be a good neighbor to private property owners adjacent to City parks, trails, greenways and other City properties. The City expects the same consideration in return. If there is a dispute between neighbors, every reasonable effort will be made to review and resolve the situation prior to resorting to formal legal action.

Protection of undeveloped public lands includes but is not limited to protection of the natural environment, animal habitat (food and shelter) and public access/enjoyment. Protection of developed properties includes protection of buildings and other improvements installed and maintained by the City on City property. Where public and private land intersect, public lands must be unencumbered by private or commercial uses that have negative impacts on the environment or interfere with or limit public access, use or enjoyment of the land. The purpose and intent of this policy is to protect and preserve all real property owned by the City of Bondurant from unauthorized use. Consideration regarding encroachments shall address land, water and habitat protection, public access, enjoyment, safety and health concerns, and protection of the general health and welfare of the users of City properties.

Policy

Encroachment onto public lands is a form of trespass and erection of structures or modifications to natural areas are encroachments into public lands that have been set aside for public use. The City of Bondurant prohibits the unauthorized placement of natural or manmade materials on City owned property, the unauthorized construction or placement of any structures or other "improvements" on City owned property and the unauthorized alteration of City property in any way (hereinafter referred to as an "Encroachment").

Examples of encroachment include, but are not limited to, the following:

- Placing any refuse or trash on public lands, including unauthorized placing of "natural" or biodegradable waste such as compost, grass or tree clippings, stumps, yard waste, animal waste or dead animals;
- Building or placing unauthorized structures such as decks, fences, walls, fire pits, storage buildings and paver patios;

- Storing personal items such as grills, picnic tables, lawn furniture, cars, trucks, trailers, boats or other equipment or vehicles;
- Installing personal gardens, flower beds, trees and other vegetation, or modifying existing vegetation, including mowing of grass;
- Applying pesticide, herbicide or other unauthorized chemicals on City property;
- Placing pipes, or trenches that redirect natural water drainage and force it onto City property from downspouts, sump pumps, or detention ponds on City property.

Procedure

Upon discovery of an encroachment, the City Administrator shall investigate and determine appropriate action. If a determination is made that the encroachment requires corrective action, the property owner will be notified, and every reasonable effort will be made to resolve the situation prior to resorting to formal legal action. If informal action does not resolve the issue, the property owner shall be notified in writing and directed to remove the unauthorized encroachment within 90 days. The property owner may submit a written request for an extension that the City Administrator is authorized to approve.

In the event that the property boundary is disputed, a boundary survey may be requested by the encroaching party and performed by a licensed surveyor. Cost for surveys shall be paid by the encroaching land owner if the survey finds that there is an encroachment upon City property without authorization. The City shall reimburse the property owner for any boundary survey where it is determined that no encroachment exists.

Costs to Resolve Unauthorized Encroachments

Failure of the property owner to remove an encroachment within 90 days, or after a granted extension, shall result in the City removing the encroachment and restoring the property to its original condition.

In this situation, the violator shall be assessed the actual costs for removal and restoration of the encroached upon area.

If the violator fails to pay the remediation costs, these costs will be placed upon the tax roll for the property. Such costs will include, but are not limited to;

- Salary and benefits of all employees performing work on the encroached upon areas;

- Equipment usage fees;
- Boundary surveys;
- Construction permit engineering or architectural fees;
- Legal fees;
- Dumping fees;
- A 5% administrative fee; and
- Accrued interest if payment is not received within 30 days of invoicing.

Appeals

Individuals may appeal encroachment decisions to the City Council for consideration. Written requests for an accommodation must be received within 30 days of the written notice of unauthorized encroachment.

Mowing Exception

In order to maintain property lines, private property owners may mow a 48" path along the property line boundary on City property.

Farmland Access Exception

In order to provide access to farmland adjacent to or bisecting City land or trails, the City may issue a permit to the bordering landowner. The permit shall identify the agreed upon access needs, buffer zone (distance, vegetation, etc.), visual triangles related to access/road/trail crossings, tile lines, responsible party and any safety concerns identified by either party.

Other Exceptions

Other exceptions to the policy may be granted by the City Administrator and reported to the City Council at the next City Council meeting only when encroachments are deemed to be in the overall City 's best interest. Every request for accommodation shall be evaluated individually and on its own merit, and may be denied for any reason deemed appropriate by the City Administrator.

If the City encroaches up on private property (tree roots), the property owner may contact the City to have the situation evaluated by the City, with any action taken based on the laws of the State of Iowa. If tree branches encroach onto private property, the owner may trim the tree up to the property line at their expense as based on Iowa law.

This policy does not apply to authorized uses approved by the City Council pursuant to licenses, easements or permits.

Draft #2

CITY OF BONDURANT ENCROACHMENT POLICY

~~JUNE 15, 2016~~

August 19,

Purpose and Intent

The City of Bondurant desires to maintain a harmonious relationship with property owners adjacent to City property while protecting the City's authority to control uses occurring on City property. The City seeks to be a good neighbor to private property owners adjacent to City parks, trails, greenways and other City properties. The City expects the same consideration in return. If there is a dispute between neighbors, every reasonable effort will be made to review and resolve the situation prior to resorting to formal legal action.

Protection of undeveloped public lands includes but is not limited to protection of the natural environment, animal habitat (food and shelter) and public access/enjoyment. Protection of developed properties includes protection of buildings and other improvements installed and maintained by the City on City property. Where public and private land intersect, public lands must be unencumbered by private or commercial uses that have negative impacts on the environment or interfere with or limit public access, use or enjoyment of the land. The purpose and intent of this policy is to protect and preserve all real property owned by the City of Bondurant from unauthorized use. Consideration regarding encroachments shall address land, water and habitat protection, public access, enjoyment, safety and health concerns, and protection of the general health and welfare of the users of City properties.

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- Storing personal items such as grills, picnic tables, lawn furniture, cars, trucks, trailers, boats or other equipment or vehicles;
- Installing personal gardens, flower beds, trees and other vegetation, or modifying existing vegetation, including mowing of grass;
- Applying pesticide, herbicide or other unauthorized chemicals on City property;
- Placing pipes, or trenches that redirect natural water drainage and force it onto City property from downspouts, sump pumps, or detention ponds on City property.

Procedure

Upon discovery of an encroachment, the City Administrator shall ~~investigate and determine appropriate action. report the encroachment to the City Council.~~ *The encroaching property owner will be given the opportunity to apply for an Encroachment Permit which will be considered by the City Council. The City Council has the ability to approve, deny or modify the encroachment. If the Permit is approved, the encroachment is allowed to continue. If the Permit is modified the encroaching property owner has 30 to make the required corrections. If the permit is denied, the encroaching property owner will have 30 days to remove/correct the encroachment. If the encroachment is not removed/corrected, the City has the option to remove the encroachment or issue a Municipal Infraction citation.* ~~If a determination is made that the encroachment requires corrective action, the property owner will be notified, and Every reasonable effort will be made to resolve the situation prior to resorting to formal legal action. If informal action does not resolve the issue, the property owner shall be notified in writing and directed to remove the unauthorized encroachment within 90 days.~~ The property owner may submit a written request for an extension that the City Administrator is authorized to approve.

In the event that the property boundary is disputed, a boundary survey may be requested by the encroaching party and performed by a licensed surveyor. Cost for surveys shall be paid by the encroaching land owner if the survey finds that there is an encroachment upon City property without authorization. The City shall reimburse the property owner for any boundary survey where it is determined that no encroachment exists.

Costs to Resolve Unauthorized Encroachments

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- Accrued interest if payment is not received within 30 days of invoicing.

Appeals

Individuals may appeal encroachment decisions to the City Council for consideration. Written requests for an accommodation must be received within 30 days of the written notice of unauthorized encroachment.

Mowing Exception

~~In order to maintain property lines, private property owners may mow up to 48" beyond the property line boundary on City property. Private property owners may mow up to 5' beyond the property line boundary on City property without an Encroachment Permit.~~

Farmland Access Exception

In order to provide access to farmland adjacent to or bisecting City land or trails, the City may issue a permit to the bordering landowner. The permit shall identify the agreed upon access needs, buffer zone (distance, vegetation, etc.), visual triangles related to access/road/trail crossings, tile lines, responsible party and any safety concerns identified by either party.

Other Exceptions

~~Other exceptions to the policy may be granted by the City Administrator and reported to the City Council at the next City Council meeting only when encroachments are~~

~~deemed to be in the overall City 's best interest. Every request for accommodation shall be evaluated individually and on its own merit, and may be denied for any reason deemed appropriate by the City Administrator.~~

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