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AFO ORDINANCE
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Lisa L. Schreiner, Recorder, Des Moines County Iowa



Prepared by Amy K. Beavers, Des Moines County Attorney, 100 Valley Street, Burlington, Iowa 52601 (319) 753-8209.

**AMENDMENT OF COUNTY ORDINANCE #6,
DES MOINES COUNTY CRIMINAL CODE**

WHEREAS, the Board of Supervisors of Des Moines County, Iowa heretofore adopted on October 14, 1996 the "Des Moines County Criminal Code, Ordinance #6" and;

WHEREAS, following implementation of said Ordinance, the Board of Supervisors can envision a more efficient and responsive document if amendments are adopted; and

WHEREAS, the passage, adoption, and enforcement of the provisions hereinafter contained are deemed necessary for the general welfare and other public requirements.

NOW, THEREFORE BE IT RESOLVED, that the Des Moines County Criminal Code Ordinance #6 be amended to as follows:

ORDINANCE #6

Short title and Citation. This Ordinance shall be known and cited as the Des Moines County Criminal Code.

Simple Misdemeanor — Penalties Defined. A simple misdemeanor is punishable by a fine of not less than \$65.00 nor more than \$625.00 and/or up to thirty (30) days imprisonment, unless otherwise specified herein.

Repeal. County Ordinance 6F shall be repealed.

Adoption of Ordinances. Des Moines County hereby adopts the following as the Des Moines County Criminal Code:

COUNTY ORDINANCE #6A
DRUG PARAPHERNALIA ACT

Section One: Short Title and Citation. This Ordinance shall be known and cited as the Des Moines County Drug Paraphernalia Act.

Section Two: Definitions. The following words and phrases when used in this Act shall have the meaning respectively ascribed to them except where the context otherwise requires.

1. "Controlled substance" shall mean: any drug, substance, or immediate precursor enumerated, defined, or established pursuant to the provisions of Schedules I, II, III, IV and V of Division II of Chapter 124, Code Of Iowa (2017).

2. "Paraphernalia" shall mean:
The term "Drug Paraphernalia" means all equipment, products, and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance listed in Schedules I through V of Division II of Chapter 124, Code of Iowa (2017). It includes, but is not limited to:
 - A. Kits used or intended for use in planting, propagating, cultivation, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - B. Kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;
 - C. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;
 - D. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness, or purity of a controlled substance;
 - E. Scales and balances used or intended for use in weighing or measuring a controlled substance;
 - F. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used or intended for use in cutting a controlled substance;
 - G. Separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 - H. Blenders, bowls, containers, spoons, and mixing devices used or intended for use in compounding a controlled substance;
 - I. Capsules, balloons, envelopes, and other containers used or intended for use in packaging controlled substances;
 - J. Containers and other objects used or intended for use in storing or

- concealing controlled substances;
- K. Hypodermic syringes, needles, and other objects used or intended for use in parenterally injecting a controlled substance into the human body;
- L. Objects used or intended for use in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - b. Water pipes;
 - c. Carburetor tubes and devices;
 - d. Smoking and carburetion masks;
 - e. Chamber pipes;
 - f. Carburetor pipes;
 - g. Electric pipes;
 - h. Air-driven pipes;
 - i. Chillums;
 - j. Bongs;
 - k. Ice pipes or chillers.

Section Three: Factors to Consider. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in possession or control of the object concerning its use or intended use;
2. Prior convictions, if any, of an owner or of anyone in possession or control of the object, under any State or federal law relating to any controlled substance, if consideration of such prior convictions is legally permissible;
3. The proximity of the object, in time and space, to a direct violation of Chapter 124 of the Iowa Code;
4. The proximity of the object to a controlled substance;
5. The existence of any residue of any controlled substance(s) on the object;
6. Direct or circumstantial evidence of the intent of an owner or of anyone in possession or control of the object, to deliver it to a person or persons whom he or she knows intends to use the object to facilitate a violation of Chapter 124 of the Iowa Code; the innocence of an owner or of anyone in possession or control of the object as to a direct violation of Chapter 124 of the Iowa Code shall not preclude a finding that the object is used or intended for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its

- use;
9. National and local advertising concerning its use;
 10. The manner in which the object is displayed for sale, including its proximity to other objects commonly used or intended for use in planting, propagating, cultivation, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of Chapter 124, Code of Iowa.
 11. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
 12. The existence and scope of legitimate uses for the object in the community;
 13. Expert testimony concerning its use.

Section Four: Offenses and Penalties.

1. Possession of drug paraphernalia prohibited.
It is unlawful for any person to use, or to possess with the intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act. Any person who violates this section is guilty of a simple misdemeanor.
2. Manufacture or delivery of drug paraphernalia prohibited.
It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this section is guilty of a simple misdemeanor.

Section Five: Additional Penalties and Remedies.

1. In addition to or in the alternative to the provisions of Section Four above, Des Moines County or an interested person may institute civil proceedings to obtain injunctive and/ or declaratory relief or such other orders of the court as are reasonable and proper to abate practices, conditions or circumstances found to be contrary to or prohibited by the provisions of this Ordinance.

Section Six: Drug Paraphernalia Forfeiture.

1. All drug paraphernalia defined by this Act shall be subject to forfeiture and may be seized and destroyed by Des Moines County. Such property shall

- not be subject to replevin.
2. Property subject to forfeiture under this Act may be seized by Des Moines County:
 - a. The seizure is incident to an arrest or a search pursuant to a search warrant;
 3. The property subject to a seizure has been the subject of a prior judgment in favor of Des Moines County in an injunction or forfeiture proceeding based upon this Act;
 4. The County has probable cause to believe that the property was used or is intended to be used in violation of this Act.

Section Seven. Construction.

This Act constitutes remedial legislation and is to be liberally construed to give effect to its purpose.

Section Eight. Severability.

It is the legislative intent that should any provision, section, clause, or sentence be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions, sections, clauses, or sentences, and to this end the provisions of this Act are severable.

COUNTY ORDINANCE #6B
IMPERSONATING A PUBLIC OFFICIAL

Any person who falsely holds himself or herself out as or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of a governmental body, having no authority to do so, commits a simple misdemeanor.

COUNTY ORDINANCE #6C
INTERFERENCE WITH OFFICIAL ACTS

A person who knowingly resists, obstructs, opposes, or impedes anyone known by the person to be an officer in the performance of any act which is within the scope of the officer's lawful duty or authority, or who knowingly resists, obstructs, opposes, or impedes the service or execution by an authorized person of any civil or criminal process or order of any court or administrative agency, commits a simple misdemeanor.

COUNTY ORDINANCE #6D
RESISTING ARREST

A person who knowingly resists, opposes, impedes, obstructs, or interferes with a police

or law enforcement officer who is attempting to make a lawful arrest, with or without a warrant, is guilty of a simple misdemeanor.

COUNTY ORDINANCE #6E
INDECENT EXPOSURE

A. A person who intentionally exposes any of his or her private parts in public to another person without the latter person's express or implied consent commits a simple misdemeanor.

B. Definitions applicable to this section are as follows:

1. "Private parts" means the pubic hairs, anus, vulva, genitals, penis, nipple(s) of the female breast(s), more than half of the female breast, or more than half of the buttocks.
2. "In public" means in or on any street, sidewalk, park, governmental building, governmental land, or any other property where the person in lawful possession of the property has not given his or her assent to the exposure. In public" also includes in any place that can be seen from the aforementioned areas.
3. "Expose" means to allow a private part to be actually visible and not covered by opaque material.

C. Regardless of the foregoing limitations, this section in no way prohibits participation in productions, performances, or exhibitions which, when taken as a whole, have serious literary, theatrical, or artistic value.

COUNTY ORDINANCE #6F
FIREWORKS – REPEALED.

COUNTY ORDINANCE #6G
DISORDERLY CONDUCT

A person commits a simple misdemeanor when the person does any of the following:

- A. Engages in fighting or violent behavior in any public place or in or near any lawful assembly of persons. Provided, that participants in athletic contests may engage in conduct which is reasonably related to the sport.
- B. Makes loud and raucous noise in the vicinity of any residence or public place which causes unreasonable stress to the occupants thereof.
- C. Directs abusive epithets or makes any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another, including, but not limited to, spitting on the person or property of

- another, calling a person slanderous or vile names, or intentionally antagonizing another by use of scurrilous or "fighting" words.
- D. Intentionally and without express or implied consent of the person in lawful possession of the property, urinates or defecates upon or in any public street or highway, public place, or the tangible property of another.
 - E. Disturbs, without lawful authority or lawful color of authority, any lawful assembly of meeting of persons by conduct intended to disrupt the meeting or assembly.
 - F. By words or action, initiates or circulates a report or warning of fire, epidemic, or other catastrophe knowing such report to be false, or such warning to be baseless.
 - G. Knowingly and publicly uses the United States flag in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit a public offense.
 - H. Obstructs any street, sidewalk, highway, or other public way without authority or justification, with the intent to prevent or hinder its lawful use by others.

COUNTY ORDINANCE 6H
ENTERING OR ATTEMPTING TO ENTER A GAMBLING FACILITY

- A. It shall be unlawful for any person under the age of twenty-one (21) years to enter or attempt to enter a gambling facility licensed to operate gambling games pursuant to Chapter 99F of the Code of Iowa (2017) unless said person is exempted from this Section as set out in Section B herein. As used in this Section, the term "gambling facility" shall include and be defined as those areas where gambling games are conducted in a gambling facility licensed to operate gambling games pursuant to Chapter 99F of the Code of Iowa.
- B. Exemptions: Persons of the age of eighteen (18) years or older are permitted to enter a gambling facility if:
 - 1. they are employed by the operator of the gambling facility and are on-duty at the time that they are in the gambling facility; or
 - 2. they are employed by a vendor of the gambling facility and are strictly entering the facility to deliver goods or other wares ordered by the facility; or
 - 3. they are employed by any mail carrier service and are entering the gambling facility to deliver mail, packages, or other postal products; or
 - 4. they are employed by a law enforcement agency and are entering the gambling facility to conduct an investigation or are otherwise responding to a call for assistance at the gambling facility.

COUNTY ORDINANCE 6I
ANIMAL CONTROL

A. PURPOSE. This chapter provides for the regulation of “potentially dangerous” *and* “vicious” dogs.

B. DEFINITIONS. For use in this chapter, the following terms or words are interpreted or defined:

1. “Attack” means an act that either by threat of physical contact or actual physical contact causes fear, pain or injury to a human being or a domestic animal so long as the latter has not first committed such an act on the offending dog.

2. “County Agent” is a public or private entity either employed or under contract with the County to assist the County in regulating various sections of this chapter.

3. “Disturbance” means the act of trespassing, chasing, maiming or killing domestic livestock or fowl; damaging or killing domestic livestock or fowl; damaging or destroying personal property; biting or attempting to bite a person.

4. “Dogs” means both male and female animals of the canine species, whether altered or not.

5. “Owner” includes, in addition to its ordinary meaning, any person or persons, firm, association or corporation owning, keeping, sheltering or harboring an animal.

6. “Potentially dangerous dog” means any of the following:

a. Any dog which, when unprovoked, on two separate occasions within a 36-month period, engages in any behavior that requires a defensive action by any person to prevent attack or injury when the person and the animal are off the property of the owner or keeper of the dog.

b. Any dog which, when unprovoked, inflicts injury upon a person.

c. Any dog which, when unprovoked, on two separate occasions, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the owner or keeper of the dog.

7. "Proper enclosure" means any pen or kennel with sides attached to a secured top and a secured bottom, floor or foundation. In lieu of a top, a fence may be used that is at least six feet in height or six feet taller than any internal structure that the dog can jump from. In lieu of a bottom, a fence may be used that is imbedded into the ground at least two feet to prevent any digging under the fence.

8. "Provoked" means, but is not limited to:

a. Any willful trespass or other tort upon premises occupied by the owner or keeper of the dog.

b. Any act of teasing, tormenting, abusing, or assaulting or threat to act; being committed by a person or domestic animal against a dog or the owner or keeper of the dog.

9. "Severe injury" means any physical injury to a human being that results in muscle or tendon tears, joint injuries, disfiguring lacerations or requires multiple sutures.

10. "Unincorporated Areas" means areas not within the confines of an incorporated city.

11. "Vicious dog" means any of the following:

a. Any dog, which, when unprovoked and in an aggressive manner, bites a human being or inflicts severe injury upon or kills a human being.

b. Any dog previously determined to be potentially dangerous by the Des Moines County Animal Control Board which, after its owner or keeper has been notified of the determination, persists in the behaviors defined in Section B(6) or is maintained in violation of Sections C and/or G.

C. SEIZURE AND IMPOUNDMENT. Any dog may be seized and impounded by the Board of Health, County Agent or a Public Safety Officer with an animal humane society, veterinarian, or other animal rescue organization under the following circumstances or as otherwise permitted under this Ordinance:

1. Any dog which is causing a disturbance.

2. Any dog believed to pose a risk or threat of harm to any person or

domestic animal.

3. Any dog against which multiple complaints for causing a disturbance have been made.

D. CONFINEMENT FOR RABIES QUARANTINE.

When the Board of Health, Public Safety Officer or any County Agent receives information that any person or animal has been bitten by an animal or that said dog or animal is suspected of having rabies, the Board of Health, Public Safety Officer or County Agent shall order the owner or person in possession to confine such animal in the manner provided herein. The Board of Health, Public Safety Officer, or County Agent may require the owner or person in possession of the animal to surrender the animal for quarantine or shall otherwise have authority to enter upon the premises of where the animal is located to seize and impound the animal in accordance with this Section. It shall be unlawful for any person to conceal an animal or interfere with the confinement of an animal as authorized herein.

1. An animal must be quarantined by a licensed veterinarian at the owner's expense, if:

a. The animal, over six (6) months of age, has no record of current rabies vaccination. Unvaccinated animals cannot be vaccinated until the end of the quarantine period, at which time the animal must be vaccinated at the owner's expense.

b. The events leading to the incident are such that rabies is suspected, there was no due cause for the incident, or the animal has suspicious recent history. This will be utilized even if the animal has a record of being currently vaccinated for rabies.

2. Home quarantine may be permissible if:

a. Conditions listed in Subsection (1) are not applicable and the owner can provide proper confinement and proper enclosure of the animal, complete with the posting of a sign in a conspicuous place, warning of possible rabies infection. Confinement will be done by the penning of the animal so that there is a metal barrier as to prevent the intimate approach of any other animal or person.

b. The owner of the animal shall sign an agreement to adhere to the rules of confinement for the designated length of time, and

also agrees to notify the Board of Health immediately if the animal sickens, dies, or escapes.

c. The animal must be examined by a licensed veterinarian at the end of the quarantine period at the owner's expense, and revaccinated if the bite occurred within two months of the expiration date of the current vaccination. The owner shall submit written proof thereof to the Board of Health, Public Safety Officer, or County Agent. The quarantine period shall be ten (10) days for all animals. With the approval of a licensed veterinarian, said animal may be euthanized and the brain sent for examination at the owner's expense, if it is not practical to confine the animal for reasons of health and safety. If the owner fails to confine such animal in the manner directed, the animal shall be apprehended and impounded, and after ten (10) days the animal may be humanely destroyed. The owner shall pay the cost of any impoundment.

E. DES MOINES COUNTY ANIMAL CONTROL BOARD

The Des Moines County Animal Control Board (hereinafter "Board") shall consist of five members. At least one member shall be a veterinarian, one member shall own livestock, and one member shall have expertise in canine training, canine or animal behavior, animal science, or animal welfare. At least three of the members shall be residents of unincorporated areas of Des Moines County. All members shall be residents of Des Moines County.

The Board shall meet at least twice per year. Its meetings shall be open to the public. Hearings before the Board shall be governed under Iowa Code Chapter 17A and shall be scheduled as necessary.

F. DES MOINES COUNTY ANIMAL CONTROL BOARD ABATEMENT PROCEDURES PERTAINING TO POTENTIALLY DANGEROUS DOGS AND VICIOUS DOGS.

In the event that the Board of Health, County Agent, or Public Safety Officer has probable cause to believe that a dog is potentially dangerous or vicious in violation of this Ordinance, the Board of Health, Public Safety Officer, or County Agent shall be empowered to file a complaint and request a hearing before the Des Moines County Animal Control Board for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious. If the dog has not been impounded, the Board of Health, Public Safety Officer, or County Agent shall notify the Board in its request for a hearing. The Board may authorize impoundment of the dog prior to a hearing.

The Board of Health, Public Safety Officer, or County Agent shall conduct or cause to be conducted an investigation and shall notify the owner or keeper of the animal in question that a hearing will be held. The hearing shall be held promptly within no less than five (5) days nor more than ten (10) days after the service of notice upon the owner or keeper of the animal. The Animal Control Board shall serve a copy of the complaint and notice of the hearing on the owner of the animal. Notice of hearing may include an immediate order for impoundment of the animal at issue.

The hearing shall be informal and shall be open to the public. The Board of Health, Public Safety Officer, or County Agent shall present its investigative findings to the Board. The Board may hear testimony from affected or concerned persons and other witnesses. The owner shall be permitted to present evidence to the Board and cross examine witnesses. After the hearing, the owner or keeper of the animal shall be notified in writing of the determination.

The Board shall have the authority to declare a dog as potentially dangerous. The Board shall issue a written decision with its findings. The Board may issue restrictions in addition to those set out in Section G to the owner or keeper of the potentially dangerous dog at the owner's expense if the dog can be appropriately returned or kept by the owner. The Board shall further have authority to humanely euthanize the dog at the owner's expense if the Board determines there has been a previous finding that the dog was potentially dangerous. The Board shall maintain a list of dogs the Board has determined to be potentially dangerous, which shall be available to the public.

The Board shall have the authority to order a dog determined to be vicious to be humanely euthanized at the owner's expense. The Board shall also have the authority to permit the dog or animal to be placed with a licensed rescue organization that is willing to accept the vicious dog if the exceptions in Section J do not apply.

If a determination is made that the dog is vicious, the Board shall further determine whether to impound the dog if impoundment has not occurred prior to the hearing. The owner shall comply with the orders of the Board, including turning over the vicious dog to the Board of Health, Public Safety Officer, or County Agent for impoundment. The owner shall not remove or conceal the whereabouts of such dog while a contested case is pending or prior to enforcement of an order for impoundment. Concealment or refusal to abide by an order to impound may be considered contempt of the order of the Board.

If the owner or keeper of a dog contests the determination by the Board, he or she may bring a petition appealing the determination in the district court. If

the dog has been impounded, the owner shall remain liable for all costs of continued impoundment during such appeal to the district court.

G. KEEPING OF POTENTIALLY DANGEROUS DOGS.

A potentially dangerous dog shall at all times be kept confined within a residence or in a secured proper enclosure. The enclosure shall be locked with a key or combination lock to prevent the entry of children. When outside of the enclosure, the dog must be kept on a substantial leash of no more than six feet in length and under the control of a responsible adult.

If there are no additional instances of the behavior described in Section B (6) within a 36-month period from the date of designation as a potentially dangerous dog, the owner may petition the Board for the dog to be removed from its list of potentially dangerous dogs.

H. RIGHT TO KILL.

The County reserves the right to euthanize any animal not under observation for rabies or under rabies quarantine for which no reasonable veterinary care would prove to be practical to sustain said animal, when said animal is afflicted with a contagious disease which would endanger the welfare of the other animals in the shelter, any dangerous animal, or any dog declared as vicious by the Board.

Any animal may also be euthanized or destroyed as otherwise permitted by law.

I. KEEPING OF VICIOUS DOGS PROHIBITED.

No person shall keep, shelter or harbor any vicious dog as a pet, or act as a temporary custodian for such dog, or keep, shelter or harbor such dog for any other purpose or in any other capacity within the County except as provided in Section J of this chapter.

No dog declared as vicious shall be allowed to be taken out of or brought into Des Moines County except as permitted by the Board.

J. VICIOUS DOG EXCEPTIONS. The prohibition contained in Section I of this Ordinance shall not apply to the keeping of vicious dogs in the following circumstances:

1. The keeping of vicious dogs in a bona fide, licensed veterinary hospital for treatment.

2. The keeping of vicious dogs by a wildlife rescue organization with appropriate permit from the Iowa Department of Natural Resources.

3. Vicious dogs while utilized by any law enforcement officer in the performance of enforcement work.

PENALTIES. Violations of this Ordinance shall constitute a simple misdemeanor as provided in Iowa law unless otherwise specified.

NO LIMITATION

Nothing in this Ordinance shall be deemed to supersede or limit any other statutes and regulations permitted under Iowa law.

SEVERABILITY.

If any section, paragraph, clause, or provision of this entire Ordinance, including 6A through 6I shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect the remaining provisions of this Ordinance.

REPEALER.

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

FIRST READING: October 17th, 2017

Robert Beck _____ yes
Thomas L. Broeker _____ yes
Jim Cary: _____ yes

APPROVED
RTS OCT 17 2017
BOARD OF SUPERVISORS

SECOND READING: October 24th, 2017

Robert Beck _____ yes
Thomas L. Broeker _____ yes
Jim Cary: _____ yes

APPROVED
RTS OCT 24 2017
BOARD OF SUPERVISORS

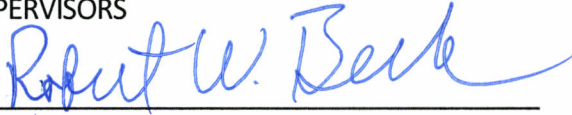
THIRD READING: October 31st, 2017

Robert Beck _____ yes
Thomas L. Broeker _____ yes
Jim Cary: _____ yes

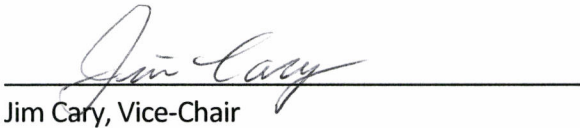
APPROVED
RTS OCT 31 2017
BOARD OF SUPERVISORS

DES MOINES COUNTY ORDINANCE #6 IS IN ITS ENTIRETY,
including 6A through 6I herein, is hereby
approved, amended, effective, and adopted
this 31st day of October, 2017.

DES MOINES COUNTY BOARD OF
SUPERVISORS



Robert W. Beck, Chair

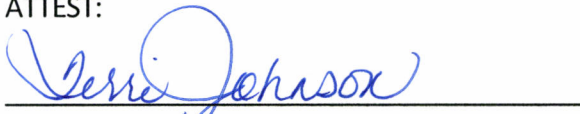


Jim Cary, Vice-Chair



Thomas L. Broeker, Member

ATTEST:



Terri Johnson, Des Moines County Auditor