



City of Muscatine

ITEM NUMBER 2023-0380

AGENDA ITEM SUMMARY

DATE: 9/7/2023

STAFF

Andrew Fangman, Assistant Community Development Director

SUBJECT

Third and Final Reading of an Ordinance Amending Nuisance Regulations Contained Within City Code Title 9, Chapter 3.

EXECUTIVE SUMMARY

Presented to City Council is the third and final reading of an ordinance to improve the nuisance abatement process by adding ten additional enumerated nuisances, aligning nuisance abatement administrative fees with the costs incurred by the City when abating a nuisance, and making other clarifications to nuisance regulations.

STAFF RECOMMENDATION

Adopt the ordinance.

BACKGROUND/DISCUSSION

Please note that the attached ordinance corrects an error in the ordinance that was heard on the first and second readings. The language necessary to make the desired change, which is highlighted in yellow below, was inadvertently omitted from Appendix D. This ordinance adds the language to Appendix D to ensure that the nuisance abatement administrative fee is properly listed.

SECTION 15. The text of Section 9-3-10 is amended to read as follows:

*If the City abates a nuisance under Section 9-3-9 of this Chapter, the City Clerk shall report the fact in writing to the Council, stating the cost and value of all tools, appliances, materials, labor, and assistance used, consumed, and performed by and for him or her, giving the several items thereof, **an administrative fee as set by resolution of City Council in Appendix D of City**, and the name of the person responsible for the commission of such nuisance and a description of the property, lot, or parcel of ground whereon such nuisance existed or from which the same came.*

Nuisances are defined by the City and State Code as “Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere unreasonably with the comfortable enjoyment of life or property, is a

nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the nuisance and to recover damages sustained on account of the nuisance.” As this a very broad definition City Code enumerates twenty specific definitions of a nuisance. The following are enumerated nuisances: offensive smells, filth or noisome substance, impeding passage of navigable river, water pollution, blocking public and private ways, billboards, storing of flammable junk, air pollution, brush, Dutch Elm Disease or emerald ash borer damage, airport air space, houses of ill fame, stagnant water, junk or unregistered vehicles, junk, refuse, or garbage, containers, poison, dangerous or unsafe, building/structure, and semitrailers parking on residential parcels.

The proposed ordinance would add ten additional enumerated nuisances to the City Code. The conditions addressed by these proposed additions already qualify as nuisances under the current City Code, with enforcement and abatement activities reflecting this fact. However, it is staff's opinion that these particular conditions would be better addressed with direct and unambiguous code language. Currently, these conditions, which are all common occurrences, are addressed through interpretations of existing code language. The more specific code is as to what is required of property owners would make understanding, complying with, and enforcing nuisance regulations easier for property owners, community members, and city staff. To accomplish this, the proposed ordinance would add the following enumerated nuisances to be added to City Code. The text of which reflects Council directions given at the December in-depth meeting.

On July 20th, a public hearing on the proposed ordinance was held at the regular City Council meeting. There was no public comment received at this public hearing.

Stagnate Swimming Pools, Spas, Hot Tubs or Wading Pools

Swimming pools, spas, hot tubs or wading pools containing stagnant water. Stagnant water shall include without limitations water that is not properly aerated and/or chlorinated that may serve as a breeding area or habitat or otherwise attract mosquitoes or other insects.

Refuse and Recycling Containers

Empty containers on curb setouts shall be returned to the container storage area before 8:00 am the day following the day of collection. The container storage area shall be either within a building or to the rear or side of the residence. If this is not physically possible, containers shall be kept directly adjacent to a structure. If this is not possible, containers shall be stored in an inconspicuous place. The owner and tenant/occupant are jointly and severally responsible for compliance with this requirement.

Section 13-13-9 of City Code, which also states where and when refuse and recycling containers must be placed for pickup and how they are to otherwise be stored, will be amended to mirror this proposed language.

Bulk Items Intended for Curbside Bulk Pickup

Bulk items intended for pick up by the City through Curbside Bulk Pickup may not be placed at the curb more than 48 hours prior to the scheduled pick up, and must comply with all

regulations regarding the quantity of and type of items that are eligible for the Curbside Bulk Pickup Program. Items not meeting these criteria shall be classified as junk, refuse, or garbage.

Junk, Refuse, or Garbage on Trailers

Garbage, refuse, solid waste, junk, debris, or the like, is located on or in any vehicle, trailer or semi-trailer, in a manner that is visible.

Animal Waste

An accumulation of animal waste, bedding materials and food that would attract insects, rodents, or any other vermin and cause an odor that would adversely affect adjoining properties.

Sump Pump Discharge

Sump pump discharge that creates a public nuisance, such as ice build-up on a public street or sidewalk; or any other hazardous conditions of a public street or sidewalk.

Private Sewer Facilities

Private sewage treatment facilities, including private sewer laterals or appurtenances thereto, shall be maintained in a manner to prevent the surfacing of effluent or the emission of offensive odors. Temporary sanitary facilities shall be maintained in a clean, sanitary manner and not be offensive to any nearby residents.

Open Storage of Items not Intended for Outdoor Use

Open storage of non-weather resistant items which are not intended for outdoor usage, including, without limitation of enumeration: Upholstered or finished furniture intended for indoor usage, such as couches, beds, mattresses, desks, chairs, shelving, household furnishings or equipment including carpeting, electronics, appliances and other typical household items intended for indoor usage.

Tires or Vehicle Parts

The open storage on private property which is residentially zoned of tires or vehicle parts including but not limited to bumpers, engines, exhaust pipes, doors, fenders, hoods, mufflers, seats, windshields or windows, wheels, or any other structural, mechanical, or decorative vehicle parts.

Pallets

The open storage of pallets on private property which is residentially zoned.

Proposed Definition of Open Storage

The storage of items in outdoor areas or in partially enclosed sheds, lean-tos or other structures not totally enclosed by structural walls, roof and properly functioning doors; and where items are visible from a public street, sidewalk, alley or from abutting parcels.

Section 9-3-3(N)(1)(b) of the City Code currently limits the number of unregistered or junk

vehicles that can be parked on a parcel to one, even if they are covered by a properly fitting car cover. However, there is no limit on the number of registered or non-junk vehicles that can be parked on a parcel, so long as they are parked in accordance with all applicable provisions of the City Code. Since the visual impact of legally parked and covered unregistered or junk vehicles is the same, they should be regulated in the same manner in order to maintain consistency. This ordinance would remove the limit on the number of unregistered or junk vehicles that can be parked on a parcel if they are covered by a properly fitting car cover, and otherwise legally parked.

When the city abates a nuisance, the property owner is invoiced for the cost of the contractor to perform the abatement and a \$25 administrative fee. This administrative fee is intended to compensate the city for the staff time and resources used to abate the nuisance. The fee has been set at \$25 for many years, at least 11 years, and likely for much longer. While the amount of the fee has stayed flat, the City's costs have not.

At the December in-depth meeting, the City Council directed that the administrative fee for nuisance abatement by the city be increased from \$25 to \$75 for the first offense and \$150 for any subsequent offenses in the same calendar year. This change brings the fee more in line with the costs incurred by the City to abate a nuisance, and aligns the City of Muscatine with other Iowa communities' nuisance abatement administrative fees..

As authorized by state law, the City charges an administrative fee for all properties on which it abates a nuisance. Appendix D of the City Code contains a schedule of fees and fines, as set by a resolution of the City Council, for the portions of the city code that are administered by the community development department. Currently, a fee for nuisance abatement is not included in Appendix D. To maintain consistency, the administrative fee charged for nuisances abated by the city should be included in Appendix D. The proposed ordinance will make the necessary code changes to allow for the administrative fee charged for nuisances abated by the City to be included in Appendix D.

In conjunction with the final reading and approval of the proposed ordinance, staff will bring forward a resolution to amend Appendix D of the ordinance to set the administrative fee for nuisance abatement by the city at \$75 for the first offense and \$150 for any subsequent offenses in the same calendar year.

CITY FINANCIAL IMPACT

A follow-up resolution to increase the administrative fee for nuisance abatement by the city to \$75 for the first offense and \$150 for any subsequent offenses in the same calendar year will be presented to the city council for action at the September 7th city council meeting, in

conjunction with the final reading of the ordinance. The resolution is expected to have a positive financial impact on the city budget

ATTACHMENTS

1. Nussiance Reg Update Ordinance - Working Draft 8-31-23

ORDINANCE NO. 2023-0380

Ordinance Amending Nuisance Regulations Contained Within City Code

WHEREAS, Chapter 3 of Title 9 of the City Code regulates nuisances, which are defined as conditions that are injurious to health, indecent, or unreasonably offensive to the senses, or obstruct the free use of property, interfering unreasonably with the comfortable enjoyment of life or property;

WHEREAS, Certain property conditions, which constitute a nuisance, would be better addressed with direct and unambiguous code language. Currently, these conditions, which are all common occurrences, are addressed through interpretations of existing code language;

WHEREAS, The more specific code as to what is required of property owners would make understanding, complying with, and enforcing nuisance regulations easier for property owners, community members, and city staff;

WHEREAS, To accomplish this, city staff is recommending that the following enumerated nuisances be added to City Code: stagnate swimming pools, spas, hot tubs or wading pools; refuse and recycling containers; bulk item intended curbside bulk pickup; junk, refuse, or garbage on trailers; animal waste; sump pump discharge; private sewer facilities; open storage of items not intended for outdoor use; tires or vehicle parts; and pallets;

WHEREAS, Section 9-3-3(N)(1)(b) of City Code limits the number of unregistered vehicles which are covered by properly fitting car covers and which are parked in a location visible from beyond the parcel upon which they are located to one per parcel;

WHEREAS, An unregistered or junk vehicle and that is covered by a properly fitting car cover and that is legally parked on a privately owned parcel has no more of a visual impact of registered or nonjunk vehicles similarly parked. There is no limit to the number of registered or nonjunk vehicles that can be parked on a parcel, so long as they are parked in accordance with all applicable provisions of City Code. As the visual impact of legally parked and covered unregistered or junk vehicles is the same, they should be regulated in the same manner in order to maintain consistency;

WHEREAS, As authorized by State Code, an administrative fee is charged to all properties upon which City abates a nuisance;

WHEREAS, Appendix D of City Code contains a schedule of fee and fines, as set by a resolution City Council, for the portions of City Code that are administered by the Community Development Department. Currently the nuisance abatement is omitted from Appendix D; and

WHEREAS, In order to maintain consistency, the administrative fee charged for nuisances abated by the City should be included in Appendix D.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA:

SECTION 1. Subsection E of Section 2 of Chapter 3 of Title 9 of City Code is hereby renumbered as Subsection F of Section 2 of Chapter 3 of Title 9 of City Code; Subsection F of Section 2 of Chapter 3 of Title 9 of City Code is hereby renumbered as Subsection G of Section 2 of Chapter 3 of Title 9 of City Code; Subsection G of Section 2 of Chapter 3 of Title 9 of City Code is hereby renumbered as Subsection H of Section 2 of Chapter 3 of Title 9 of City Code; and Subsection H of Section 2 of Chapter 3 of Title 9 of City Code is hereby renumbered as Subsection I of Section 2 of Chapter 3 of Title 9 of City Code

SECTION 2. The following text is added as **Section 9-3-2(E):**

E. “Open Storage” means the storage of items in outdoor areas or in partially enclosed sheds, lean-tos or other structures not totally enclosed by structural walls, roof and properly functioning doors; and which items are visible from a public street, sidewalk, alley or from abutting parcels.

SECTION 3. The following text is added as **Section 9-3-3(U):**

U. Stagnate Swimming Pools, Spas, Hot Tubs or Wading Pools

Swimming pools, spas, hot tubs or wading pools containing stagnant water. Stagnant water shall mean without limitation water that is not properly aerated and/or chlorinated that may serve as a breeding area or habitat for or otherwise attract mosquitoes or other insects.

SECTION 4. The following text is added as **Section 9-3-3(V):**

V. Refuse and Recycling Containers

- 1. Empty containers on curb setouts shall be returned to the container storage area before 8:00 am of day following the day of collection.**
- 2. The container storage area shall be either within a building or to the rear or side of the residence, if this is not physically possible, containers shall be kept directly adjacent to a structure, if this is not possible, containers shall be stored in an inconspicuous place.**
- 3. The owner and tenant/occupant are jointly and severally responsible for compliance with this requirement.**

SECTION 5. The text of **Section 13-3-9(A)** is amended to read as follows:

Refuse and recycling containers shall be placed for City collection pursuant to Subsections (B) and (C) at or before 5:00 o'clock A.M. on collection days, but in no case, earlier than 4:00 o'clock P.M. the day before collection. Empty containers on curb setouts shall be returned to the container storage area before 8:00 am of day following the day of collection. The container storage area shall be either within a building or to the rear or side of the

residence, if this is not physically possible, containers shall be kept directly adjacent to a structure, if this is not possible, containers shall be stored in an inconspicuous place. The owner and tenant/occupant are jointly and severally responsible for compliance with this Chapter.

SECTION 6. The following text is added as **Section 9-3-3(W):**

W. Bulk Item Intended Curbside Bulk Pickup

Bulk items intended for pick up by the City through Curbside Bulk Pickup may not be placed at the curb more than 48 hours prior to the scheduled pick up, and must comply must comply with all regulations regarding the quantity and type of items that are eligible for the Curbside Bulk Pickup Program. Items not meeting these criteria shall be classified as junk, refuse, or garbage.

SECTION 7. The following text is added as **Section 9-3-3(X):**

X. Junk, Refuse, or Garbage on Trailers

Garbage, refuse, solid waste, junk, debris, or the like that is located on any vehicle, trailer or semi-trailer, in a manner that is visible

SECTION 8. The following text is added as **Section 9-3-3(Y):**

Y. Animal Waste

An accumulation of animal waste, bedding materials and food that would attract insects, rodents, or any other vermin and cause an odor that would adversely affect adjoining properties.

SECTION 9. The following text is added as **Section 9-3-3(Z):**

Z. Sump Pump Discharge

Sump pump discharge creating a public nuisance, such as ice build-up on a public street or sidewalk, or any other hazardous conditions on a public street or sidewalk.

SECTION 10. The following text is added as **Section 9-3-3(AA):**

AA. Private Sewer Facilities

- 1. Private sewage treatment facilities, including private sewer laterals or appurtenance thereto, shall be maintained in a manner to prevent the surfacing of effluent or the emission of offensive odors.**
- 2. Temporary sanitary facilities shall be maintained in a clean, sanitary manner and not be offensive to any nearby residents.**

SECTION 11. The following text is added as **Section 9-3-3(BB)**:

BB. Open Storage of Items not Intended for Outdoor Use

Open storage of non-weather resistant items which are not intended for outdoor usage, including without limitation of enumeration: upholstered or finished furniture intended for indoor usage such as couches, beds, mattresses, desks, chairs, shelving, household furnishings or equipment including carpeting, electronics, appliances and other typical household items intended for indoor usage.

SECTION 12. The following text is added as **Section 9-3-3(CC)**:

CC. Tires or Vehicle Parts

The open storage on private property which is residentially zoned of tires or vehicle parts including but not limited to bumpers, engines, exhaust pipes, doors, fenders, hoods, mufflers, seats, windshields or windows, wheels, or any other structural, mechanical, or decorative vehicle parts.

SECTION 13. The following text is added as **Section 9-3-3(DD)**:

DD. Pallets

The open storage of pallets on private property which is residentially zoned.

SECTION 14. The text of **Section 9-3-3(N)(1)(b)** is amended to read as follows:

b. Outdoors in locations not within the public right of way in which a vehicle may be lawfully parked, provided that any such vehicle is fully covered with a commercial tarpaulin constructed especially for motor vehicles, sufficient in size to cover the entire vehicle. Such vehicle cover must be in good condition and must be replaced if it becomes torn, weather-beaten, or acquires any other defects. Makeshift covers do not satisfy the requirement of this subsection.

SECTION 15. The text of **Section 9-3-10** is amended to read as follows:

If the City abates a nuisance under Section 9-3-9 of this Chapter, the City Clerk shall report the fact in writing to the Council, stating the cost and value of all tools, appliances, materials, labor, and assistance used, consumed, and performed by and for him or her, giving the several items thereof, an administrative fee as set by resolution of City Council in Appendix D of City, and the name of the person responsible for the commission of such nuisance and a description of the property, lot, or parcel of ground whereon such nuisance existed or from which the same came.

SECTION 16. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 17. Any Ordinance or part thereof in conflict or inconsistent with the provisions of this Ordinance is repealed.

SECTION 18. This ordinance shall be in effect from and after the passage and approval and publication of this ordinance, as provided by law

PASSED, APPROVED AND ADOPTED this 7th day of September, 2023.

Attest

**By the City Council of the City of
Muscatine, Iowa**



Bradley Bark (Sep 12, 2023 17:12 CDT)

Dr. Brad Bark, Mayor



Carol Webb (Sep 12, 2023 18:10 CDT)

Carol Webb
City Clerk

First Reading: 8-3-2023
Second Reading: 8-17-2023
Third Reading: 9-7-2023
Publication: 9/18/2023



***** Proof of Publication *****

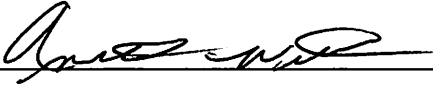
The undersigned, being first duly sworn, on oath does say that he/she is an authorized employee of THE MUSCATINE JOURNAL, morning edition, a daily newspaper printed and published by Lee Enterprises, Incorporated, in the City of Davenport, Scott County, Iowa, and that a notice, a printed copy of which is made a part of this affidavit, was published in said THE MUSCATINE JOURNAL, on the dates listed below.

CITY OF MUSCATINE- Legals account

215 Sycamore Street
MUSCATINE, IA 52761

ORDER NUMBER 164002

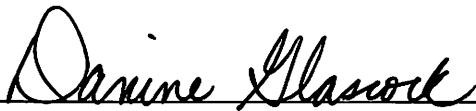
The affiant further deposes and says that all of the facts set forth in the foregoing affidavit are true as he/she verily believes.



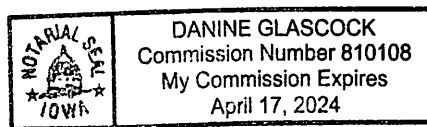
Section: Notices & Legals
Category: 2635 Legal Ordinance
PUBLISHED ON: 09/18/2023

TOTAL AD COST: 177.23
FILED ON: 9/18/2023

Subscribed and sworn to before me by said affiant this 18 day of SEPTEMBER 23



Notary Public in and for Scott County, Iowa



*** Proof of Publication ***

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*** Proof of Publication ***

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SECTION 16. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 17. Any Ordinance or part thereof in conflict or inconsistent with the provisions of this Ordinance is repealed.

SECTION 18. This ordinance shall be in effect from and after the passage and approval and publication of this ordinance, as provided by law

PASSED, APPROVED AND ADOPTED this 7th day of September, 2023.

Attest

By the City Council of the City of Muscatine, Iowa

Brad Bark, Mayor

Carol Webb
City Clerk

First Reading: 8/3/2023
Second Reading: 8/17/2023
Third Reading: 9/7/2023
Publication: 9/19/2023