



City of Muscatine

ITEM NUMBER 2022-0483

IN-DEPTH ITEM - CITY COUNCIL

DATE: 12/8/2022

STAFF

SUBJECT FOR DISCUSSION

Potential Updates to Nuisance Regulations, the Appeal Process, and Administrative Fees

EXECUTIVE SUMMARY

A presentation on proposed additional enumerated nuisances; alternative methods for hearing appeals relating to nuisances; and potential changes to administrative fees relating to the abatement of nuisances.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. Does City Council support moving forward on adding the proposed additional enumerated nuisances to City Code?
2. Does Council wish to pursue changes to City Code to change how appeals of nuisances are handled?
3. Does Council desire that the proposed changes to administrative fees for nuisances be brought forward for City Council consideration?

BACKGROUND/DISCUSSION

Nuisances are defined by 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.

City staff is proposing that 10 additional nuisances be added to 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, city staff is recommending that the following enumerated nuisances be added to City Code.

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 refuse and recycling containers shall be returned to the container storage area within 12 hours after collection. The storage area shall be either within a building or to the rear or side of the residence. The owner and tenant/occupant are jointly and severally responsible for compliance with this requirement.

Bulk Items 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 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

Any vehicle, trailer or semi-trailer which, although operable, contains stored gasoline or other fuel, paper, cardboard, wood or other combustible materials, garbage, refuse, solid waste, debris, or the like.

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 or wooden tables, household furnishings or equipment including carpeting, electronics, appliances and other typical household items intended for indoor usage.

Tires or Vehicle Parts

Open storage 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

Open storage of pallets.

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.

Currently, the City Code gives anyone that has received an order to abate a nuisance 10 days from the date of the order to file an appeal of the determination that nuisance exists on their property. This appeal is then heard by City Council. State law does allow for other methods of handling appeals. It is not required for City Council to serve as the body that makes determinations on these appeals. In a number of Iowa communities, nuisance appeals are handled by an appointed board of community members, similar to the Zoning Board of Adjustment, or by a hearing officer, an appointed third party that functions much like a judge. If the City Council desires to change the role it plays in the nuisance appeal process, staff can bring back a detailed proposal based on the consensus of City Council at this in-depth meeting.

When the City abates a nuisance, the owner of the property upon which the nuisance exists 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. This fee has been set at \$25 for many years, at least 11 years and likely for a lot longer than that. While the amount of the fee has stayed flat, the City's costs have not. It is the recommendation of staff that this fee be changed from \$25 to \$75 for the first offense and for any \$150 subsequent offenses in the same calendar year. Staff is making this recommendation on the basis that this brings the fee more inline with the costs incurred by the City to abate a nuisance, and brings the City of Muscatine in line with what other Iowa communities set their nuisance abatement administrative fees at. The following list shows

what various communities in Iowa set this fee at.

Newton – \$75 first offense, \$100 subsequent offenses

Clive - \$67

Burlington – \$100 first offense, \$200 subsequent offenses

Ft. Dodge – \$50 Snow, \$75 grass and junk.

Ottumwa - \$50

Iowa City - \$100

Cedar Rapids - \$100

Cedar Falls- 10% of abatement costs

Washington - \$50 for repeat and severe offenses

ATTACHMENTS
