



City of Muscatine



AGENDA ITEM SUMMARY

City Council

DATE: 7/15/2021

STAFF

Andrew Fangman, Assistant Community Development Director

SUBJECT

Ordinance Updating the Regulations of Nuisance Vehicles, Chapter 3 – Nuisance of Title 9 – Health and Sanitary Regulations, Of City Code

EXECUTIVE SUMMARY

Staff has prepared an ordinance that update regulations regarding nuisance vehicles, which are contained within Chapter 3 of Title 9 of City Code.

STAFF RECOMMENDATION

Staff recommends approval of the attached ordinance

BACKGROUND/DISCUSSION

At the February in-depth meeting, as part of a continuing effort to improve City Code, with the intent of making City Code easier to understand and enforce, City Council reviewed a draft ordinance which would make changes to City Code as it pertains to nuisance vehicles, including both junked and unregistered vehicles. The intent of the proposed changes is not to radically change how nuisance vehicles are regulated, but rather to improve on the current approach.

Based on direction received from City Council at February in-depth meeting, revisions were made to the draft ordinance. The attached ordinance reflects the revisions requested by City Council.

The prosed ordinance would improve City Code by doing the following:

- Creating a detailed definition of a “vehicle”. This is necessary to encompass the wide variety of vehicles, which can potentially become a nuisance.
- Clarifying that a vehicle may still meet the definition of a “junked vehicle” and classified as nuisance under this chapter, even if said vehicle is currently registered as required by state law.
- Creating a more detailed definition of a “junked vehicle” by using criteria that is both objective and easy to observe through a simple visual inspection.

- Defining the process by which an extension to a deadline to abate a nuisance, contained with a notice to abate a nuisance can be requested.

Chapter 3 of Title 9 of the City Code regulates nuisances. This chapter defines what constitutes a nuisance and sets forth the procedure by which the City may take direct action to have a nuisance abated. When a vehicle is found to be a nuisance, abatement usually takes the form of towing away the vehicle that is creating the nuisance.

Nuisances are broadly defined in Section 9-3-1 of City Code and by Section 657.1 of the Code of Iowa 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.*

Section 9-3-3 of City contains all specific conditions that constitute a nuisance, this includes subsection N which states: *"Vehicles. Any unused, abandoned, junked, or obsolete cars or motor vehicles whether on private or public property."*

Current City Code (Section 9-3-2-D) contains the following definition: *A "junked or obsolete car or motor vehicle" shall be a car or motor vehicle, or a portion thereof, not in running condition or not licensed for the current year as provided by law. This definition shall not apply to a vehicle, or part thereof stored within a building, or protected with a fitted cover designed specifically as a vehicle cover. The use of tarps, blankets, or similar temporary covers shall not be deemed acceptable under this Section.*

The proposed code change would replace the current definition of "junked or obsolete car or motor vehicle", with the following three definitions.

- "Vehicle" means a machine propelled or pushed or pulled by power other than human power designed to travel along the ground or in water and transport persons or property or pull machinery and shall include as examples, but shall not be limited to, automobiles, trucks, trailers, motorcycles, motorbikes, motor scooters, tractors, go-carts, riding lawn mower, golf carts, campers, buggy and wagons, recreational and camping trailers, boats, boats on a trailer, camper shells, cargo/enclosed trailers, race car trailers, equipment trailers, car haulers, concession/specialty trailers, motorcycle-ATV-snowmobile trailers and landscape trailers.

Because vehicles that are not just intended to be operated on public streets can become a nuisance, adding the proposed definition will make it clear that any type of vehicle can potentially be classified as a junked or unregistered vehicle if it meets the relevant criteria.

"Junked Vehicle" means any vehicle, which exhibits any one or more of the following characteristics:

1. **Any vehicle designed to be capable of moving itself when in proper repair but is incapable of being moved under its own power in its existing condition.**

2. Any vehicle that is incapable of being operated for want of a major component of the vehicle.
3. Any vehicle that does not have all tires inflated.
4. Any dismantled or partially dismantled vehicle.
5. Any vehicle missing significant body parts such as, hood, fender, cab, door, wheel, or trunk lid.
6. Any vehicle with a missing or shattered windshield.
7. Any vehicle with any exposed broken glass edges.
8. Any vehicle that is the habitat of rats, mice, snakes or any other vermin or insects.”

The proposed definition of junked vehicle uses easily observed criteria in defining what constitutes a junked vehicle. This would be a major improvement over current definition defining a junked vehicle as one that is not in running conditions. Using a standard of “not in running condition” as the definition of a junked vehicle can make it difficult to enforce a prohibition on junked vehicles. Frequently it is not possible to determine, through a simple visual observation, if a parked vehicle is in running condition or not.

- **“Unregistered Vehicle” means a vehicle for which state law requires registration, but which is not currently registered. This definition includes vehicles with expired registration.**

Creating a specific definition for unregistered vehicles is one part of a set of proposed changes intended to clarify the fact that simply registering a vehicle does not necessarily preclude a vehicle from meeting the criteria for classification as junked vehicle.

The proposed ordinance moves the requirements for legally storing junked and unregistered vehicles out of the definition subsection of the Chapter and into the section that contains regulations for junked and unregistered. Regulatory language should not be included within the definition of a term. The definition section of a regulatory document is not where most would look to find the actual rules governing a particular situation. The language in the proposed ordinance is largely the same as existing code, aside from changes to provide greater clarity.

The proposed ordinance would replace the current Section 9-3-3 (N) with the following text:

N. Junked or Unregistered Vehicles

It shall be unlawful for any person to store, maintain or keep, any "junked vehicle" or "unregistered vehicle", as defined in this chapter, on any private property in the city; and it shall be unlawful for any owner or manager of real property to permit or allow the storage, maintenance, or keeping of any such junked vehicle or unregistered vehicle on real property under their dominion or control. Except a junked or unlicensed vehicle may be kept as follows:

- 1. Residentially zoned districts:**
 - a. In a fully enclosed garage or like structure.**
 - b. Outdoors in locations not within the public right of way in which a vehicle may be lawfully parked. Provided that there is no more than one junked vehicle on the parcel, 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.**

- 2. Non-Residentially zoned districts:**

Junked or unregistered vehicles shall be stored in a fully enclosed structure or in an area that is completely screened (opaque fence or landscaping) in a lawful manner where it is not visible from the street or other public or private property including the public right of way.

- 3. Vehicle Sales**

Upon parcels where there is a currently valid Motor Vehicle Dealer License issued by the Iowa Department of Transportation unregistered, but not junked vehicles may be stored in any location on a property upon which a vehicle can lawfully be parked.

This proposed change is intended to improve City Code in two ways. First, this change provides clarity that a vehicle can become a nuisance by being meeting the criteria to be classified as either or both. Current code is often interpreted as a vehicle with valid registration does not meet the criteria to be classified as a nuisance, regardless of the actual physical condition of the vehicle in question. Many vehicles are in such poor physical shape that the negative impact that they have on the surrounding area is not improved by simply registering the vehicle with the state.

The proposed ordinance would replace the current Section 9-3-8 with the following text:

9-3-8 Appeals and Extensions

A. Request 9-3-8 Appeals and Extensions

A. Request for a Hearing to Appeal a Determination of a Nuisance

- 1. Any person to whom the Notice to Abate is directed may appeal the determination that the condition of the property constitutes a nuisance by requesting a hearing before the City Council.**
- 2. The request must be in writing and be delivered to the City Clerk within ten (10) days from the date of the Notice to Abate or the decision will be**

final that a nuisance exists which must be abated as stated in the Notice to Abate.

B. Request for an Extension of a Notice to Abate

1. Any person to whom the Notice to Abate is directed may request an extension of time to complete any action to abate a nuisance.
2. Such request for an extension shall be made to the Community Development Department no later than at least one (1) business day prior to the deadline imposed by the Notice to Abate.
3. Approval of an extension to a Notice to Abate may be granted if the Community Development Department finds that:
 - a. Strict compliance with the deadline set by the Notice to Abate is impractical;
 - b. That the granting of such an extension does not violate the intent and purpose of City Code;
 - c. That granting the requested extension does not endanger the life, health, or safety, or property."

When reviewing this proposed ordinance at February in-depth meeting, the consensus of City Council was that City Code needs to specifically address how any requests for an extension to a deadline for abatement contained with a notice to abate are to be handled. To accomplish this the creation of Section 9-3-8(B), highlighted in yellow above has be incorporated into the draft ordinance.

This proposed section defines a process for requesting an extension, and gives the criteria by for the approval of a request for an extension. The proposed language is being added to Section 9-3-8 of City Code as Subsection B. The existing Section 9-3-8 which deals with request for a hearing to appeal a determination of a nuisance would become Subsection A of an expanded Section 9-8-3, but would otherwise remain unchanged.

It should be noted that the proposed process for requesting an extension on a notice to abate a nuisance, would cover all just nuisances covered by Chapter 3 of Title 9, and not just nuisances related to junk and unregistered vehicles. There is not a rational reason why a process to request an extension to abate a nuisance should solely exist when the nuisance relates to a vehicle.

CITY FINANCIAL IMPACT

None.

ATTACHMENTS

1. Ordinance

ORDINANCE NO. 2021-0205

**AN ORDINANCE UPDATING THE REGULATIONS OF NUISANCE
VEHICLES, CHAPTER 3 – NUISANCE OF TITLE 9 – HEALTH AND
SANITARY REGULATIONS, OF 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, said nuisance regulations currently address the circumstances under which a vehicle can be constituted as a nuisance;

WHEREAS, with the intent of making nuisance regulations as they relate to vehicles easier to understand and enforce, as well to make the implementation of said regulations better achieve their intent, this ordinance makes a number of changes to Chapter 3 of Title 9 of City Code;

WHEREAS, it is necessary to clarify that a vehicle may still meet the definition of a “junked vehicle” and be classified as a nuisance under this chapter, even if said vehicle is currently registered as required by state law;

WHEREAS, a detailed definition of a “junked vehicle” using objective and easy to observe criteria is necessary;

WHEREAS, a detailed definition of a “vehicle” is necessary to encompass the wide variety of vehicles which can potentially become a nuisance; and

WHEREAS, recognizing that there can be circumstances with strict compliance with the deadline set by a “Notice to Abate a Nuisance” can be impractical, and that in such circumstances, the City should have the discretion to extend the deadline to abate such vehicle, so long as such an extension does not endanger the life, health, or safety, or property.

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

SECTION 1. The following sections of Chapter 3 of Title 9 of City Code are hereby deleted:

Section 9-3-2(D);

Section 9-3-3(N); and

Section 9-3-8.

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

“D. “Junked Vehicle” means any vehicle, which exhibits any one or more of the following characteristics:

1. Any vehicle designed to be capable of moving itself when in proper repair, but is incapable of being moved under its own power in its existing condition.
2. Any vehicle that is incapable of being operated for want of a major component of the vehicle.
3. Any vehicle that does not have all tires inflated.
4. Any dismantled or partially dismantled vehicle.
5. Any vehicle missing significant body parts such as, hood, fender, cab, door, wheel, or trunk lid.
6. Any vehicle with a missing or shattered windshield.
7. Any vehicle with any exposed broken glass edges.
8. Any vehicle that is the habitat of rats, mice, snakes or any other vermin or insects.”

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

“F. “Unregistered Vehicle” means a vehicle for which state law requires registration, but which is not currently registered. This definition includes vehicles with expired registration.”

SECTION 4. The following text is added as **Section 9-3-2(G):**

“G. “Vehicle” means a machine propelled or pushed or pulled by power other than human power designed to travel along the ground or in water and transport persons or property or pull machinery and shall include as examples, but shall not be limited to, automobiles, trucks, trailers, motorcycles, motorbikes, motor scooters, tractors, go-carts, riding lawn mower, golf carts, campers, buggy and wagons, recreational and camping trailers, boats, boats on a trailer, camper shells, cargo/enclosed trailers, race car trailers, equipment trailers, car haulers, concession/specialty trailers, motorcycle-ATV-snowmobile trailers and landscape trailers.”

SECTION 5. The following text is added as **Section 9-3-3(N):**

“N. Junked or Unregistered Vehicles

It shall be unlawful for any person to store, maintain or keep, any "junked vehicle" or "unregistered vehicle", as defined in this chapter, on any private property in the city; and it shall be unlawful for any owner or manager of real property to permit or allow the storage, maintenance, or keeping of any such junked vehicle or unregistered vehicle on real property under their dominion or control. Except a junked or unlicensed vehicle may be kept as follows:

1. Residentially zoned districts:

- a. In a fully enclosed garage or like structure.
 - b. Outdoors in locations not within the public right of way in which a vehicle may be lawfully parked. Provided that there is no more than one junked vehicle on the parcel, 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.
2. Non-Residentially zoned districts:
Junked or unregistered vehicles shall be stored in a fully enclosed structure or in an area that is completely screened (opaque fence or landscaping) in a lawful manner where it is not visible from the street or other public or private property including the public right of way.
3. Vehicle Sales

Upon parcels where there is a currently valid Motor Vehicle Dealer License issued by the Iowa Department of Transportation unregistered, but not junked vehicles may be stored in any location on a property upon which a vehicle can lawfully be parked.

SECTION 6. The following text is added as **Section 9-3-8:**

“9-3-8 Appeals and Extensions

- A. Request for a Hearing to Appeal a Determination of a Nuisance**
 1. Any person to whom the Notice to Abate is directed may appeal the determination that the condition of the property constitutes a nuisance by requesting a hearing before the City Council.
 2. The request must be in writing and be delivered to the City Clerk within ten (10) days from the date of the Notice to Abate or the decision will be final that a nuisance exists which must be abated as stated in the Notice to Abate.
- B. Request for an Extension of a Notice to Abate**
 1. Any person to whom the Notice to Abate is directed may request an extension of time to complete any action to abate a nuisance.
 2. Such request for an extension shall be made to the Community Development Department no later than at least one (1) business day prior to the deadline imposed by the Notice to Abate.
 3. Approval of an extension to a Notice to Abate may be granted if the Community Development Department finds that:

- a. Strict compliance with the deadline set by the Notice to Abate is impractical;
- b. That the granting of such an extension does not violate the intent and purpose of City Code;
- c. That granting the requested extension does not endanger the life, health, or safety, or property.”

SECTION 7. 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 8. Any Ordinance or part thereof in conflict or inconsistent with the provisions of this Ordinance is repealed.

SECTION 8. 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 15th day of July, 2021.

Attest

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

Diana L. Broderson, Mayor

Carol Webb
City Clerk

First Reading: June 17, 2021

Second Reading: July 1, 2021

Third Reading: July 15, 2021

Publication: