



# City of Muscatine



## AGENDA ITEM SUMMARY

DATE: 8-19-21

City Council

### STAFF

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Andrew Fangman, Assistant Community Development Director

### SUBJECT

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Ordinance Adding Section 15, Chronic Nuisance Property to Title 9, Health and Sanitary Regulations, Chapter 3 Nuisance

### EXECUTIVE SUMMARY

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The purpose of this item is to add a new section of City Code - Section 15, Title 9, Chapter 3, to address chronic nuisance properties. Adding this section will provide additional tools for remedying properties upon which nuisances are chronically found to exist. Existing code is effective in allowing the City to recover the direct costs of hiring a contractor to abate these nuisances. However, the cost of the large amounts of staff time that chronic nuisance properties consume are not currently being fully recovered. Additionally, for properties upon which nuisance conditions are chronically being allowed to develop, the property having to pay the City for the cost to abate these nuisances has not been effective deterrent.

The proposed code defines a chronic nuisance property as one on which three or more nuisance activities occur or exist within a twelve (12) month period and allows the City, upon notice to the owner of the property and any tenant, that future nuisance service calls may be subject to a special assessment over and above the costs of any abatement. Such special assessments are intended solely to recover the City costs.

### STAFF RECOMMENDATION

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Staff recommends approval of the attached ordinance.

### BACKGROUND/DISCUSSION

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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, and the procedure by which the City can recover costs incurred for abatement through a special assessment against the property upon which the nuisance occurred.

Nuisance 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 Code contains a list of specific conditions that constitute a nuisance.

There are a number of properties upon which nuisances chronically develop despite repeated abatement by the City. Existing code is effective in allowing the City to recover the direct costs of hiring a contractor to abate these nuisances, however the cost of additional staff time that chronic nuisance properties consume is not currently being fully recovered. Additionally, for properties upon which nuisance conditions are chronically being allowed to develop, the payment of nuisance abatement costs have not been an effective deterrent.

Consequently, City staff seeks to add code language that explicitly provides for the following:

- Creates a new category of violations for repeated nuisances that can result in additional penalties (i.e. special assessments);
- Clearly articulates what is required to be included in the abatement notice for a chronic nuisance;
- Allows the City to more fully recover costs associated with abatement from the owner of the property AND the tenant;
- Expressly identifies the abatement costs may include expenses directly incurred by the City;
- Allows the City to prepare a special assessment over and above the costs of the abatement (to recover City costs); and,
- Expressly states that the City may also pursue any other penalties authorized for nuisance violations (such as a municipal infraction).

## CITY FINANCIAL IMPACT

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The financial impact of this action will be positive, as it will allow the City to more fully recover the cost of abating chronic nuisance properties.

## ATTACHMENTS

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1. Ordinance

**ORDINANCE NO. 2021-0262**

**AN ORDINANCE ADDING SECTION 15 CHRONIC NUISANCE PROPERTY TO  
TITLE 9 HEALTH AND SANITARY REGULATIONS, CHAPTER 3 NUISANCE**

**WHEREAS**, chronic nuisance properties present health, safety and welfare concerns for the public and have a negative impact upon the quality of life, safety and health of the neighborhoods where they are located; and

**WHEREAS**, chronic nuisance properties are a financial burden to the city by the repeated calls for service to such properties, which places an undue and inappropriate burden on the other taxpayers in the City; and

**WHEREAS**, the City wishes to ameliorate the above conditions and hold responsible the owners or person in charge of such property.

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of Muscatine, Iowa as follows:

**SECTION 1. AMENDMENT.** TITLE 9 HEALTH AND SANITARY REGULATIONS, CHAPTER 3 NUISANCE of the City Code of Muscatine Section 9-3-15 is added as a new section as follows:

**9-3-15 Chronic Nuisance Property.** Chronic Nuisance Property shall mean a property on which three (3) or more nuisance activities occur or exist within a twelve (12) month period.

- A. Whenever the City determines that three (3) or more nuisance activities have occurred or exist on a property during a twelve (12) month period, the City may notify the property owner or other responsible party, as set forth in Muscatine City Code 9-3-5, that the property is a chronic nuisance property.
- B. The chronic nuisance notice shall:
  - 1. Identify the type and specific location of nuisance service call(s), including tenant or lessee names where applicable;
  - 2. Summarize the evidence of the nuisance occurring on the property;
  - 3. Provide the dates on which the nuisance calls for service were made on the property; and
  - 4. Warn the owner of the property and any tenant that future nuisance service calls may subject them jointly and severally to liability for the cost associated with any response to such nuisance service call, based upon the actual cost of the response.
- C. When a chronic nuisance notice has been properly served as set forth in Section 9-3-7, the owner of the property and any tenant shall be jointly and severally responsible for each successive nuisance incident occurring on the property and shall be jointly, severally and individually responsible for payment of any and all costs associated with each successive nuisance service call within any twelve (12) month period, based upon the actual cost of the response. The cost of a response shall include, without limitation, the gross salaries,

including all benefits and overhead paid to the responding employees of the City, City administrative costs, the pro rata cost of all equipment and the cost of repairs to any equipment or property owned by the City that is damaged in responding to the nuisance service call.

- D. The costs of the response shall be included in a statement of service costs, which shall be prepared and served subject to the provisions of Section 9-3-7 of this Code. If a statement of service costs is not timely paid, the City may cause a special assessment to be made upon the property pursuant to Section 9-3-11 of this Code.
- E. The costs of response for such chronic nuisance properties shall be in addition to any other costs and/or remedies allowed by Iowa Code or the Muscatine City Code.

SECTION 3. REPEALER. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 5. WHEN EFFECTIVE. This ordinance shall be effective from and after its final passage, approval and publication as provided by law.

Passed First Reading by the City Council of Muscatine, Iowa, 5th day of August, 2021.

Passed Second Reading by the City Council of Muscatine, Iowa, the 19th day of August, 2021.

PASSED AND ENACTED by the City Council of Muscatine, Iowa, the 2nd day of September, 2021.

*Diana L. Broderson*

Diana L. Broderson (Sep 3, 2021 09:53 CDT)

Diana Broderson, Mayor

ATTEST:

*Carol Webb*

Carol Webb (Sep 3, 2021 10:20 CDT)

Carol Webb, City Administrator



**1st Reading –**

Motion by Council Member Gordon, seconded by Council Member Jindrich, first reading of Ordinance No. 2021-0262.

AYES:7

NAYS:0

ABSENT:0

**2nd Reading – \_**

Motion by Council Member Gordon , seconded Council Member Malcolm , to approve the second reading of Ordinance No.2021-0262.

AYES: 7

NAYS: 0

ABSENT: —

**3rd Reading** —

Motion by Council Member Froelich , seconded by Council Member Jindrich , to approve the third reading of Ordinance No. 2021-0262.

AYES: 7

NAYS: 0

ABSENT: —

The Mayor declared Ordinance No. 2021-0262 was passed on September 2, 2021.

I certify that the foregoing was published as Ordinance No. 2021-0262 on the 2 day of Sept 2021.



Carol Webb (Sep 3, 2021 10:20 CDT)

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Carol Webb, City Administrator