

AGENDA ITEM SUMMARY

DATE: 4-7-22

City Council

STAFF

Andrew Fangman, Assistant Community Development Director

SUBJECT

Third and final reading of an ordinance establishing vacant property and non-residential property maintenance regulations in Chapter 5 of Title 16 of City Code.

EXECUTIVE SUMMARY

Presented for City Council's consideration is an ordinance establishing maintenance standards for vacant properties that have been continuously vacant for **1 year** or longer, and non-residential properties both occupied and non-occupied. The regulations under consideration do not include occupied residential dwellings. The objectives of the code are: to prevent properties from deteriorating to the point of visual blight; to prevent hazardous conditions and to preserve structural integrity and prevent demolition by neglect. The attached draft reflects action taken by City Council at the second reading of this ordinance, to change the length of time that a property must be vacant to classified as a vacant property from 6 months to 1 year.

STAFF RECOMMENDATION

Staff recommends approval of the attached ordinance.

BACKGROUND/DISCUSSION

The adopted 2021 Strategic Plans sets a goal for the community to become more vibrant. The Vibrant Community Goal specifically states: *"Enhance and improve the vitality of our community core and gateways including the Grandview Avenue Corridor, Park Avenue Corridor, Riverfront, and Downtown areas to support a thriving economy, vibrant neighborhoods, and a high quality of life and place."* Improvements to how City Code regulates property conditions has been identified as a strategy for achieving the goal of a more vibrant community.

City Code regulates property conditions through specific standards that a property must comply with, and the mechanism by which adherence to these standards is enforced.

Currently City Code regulates property condition in four broad ways:

- **Construction standards:** the adopted building codes with the permitting and inspection system ensure compliance with these codes;
- **Rental housing standards:** the established standards to which a residential rental property must be maintained, and a licensing and inspection system to ensure compliance;

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- **Dangerous and unsafe building regulations:** regulations defining what constitutes a dangerous building and the procedure for posting such buildings to be posted for no occupancy and requiring such building to be abated through repair or demolition; and
- **Nuisance regulations:** various regulations dealing with non-structural issues, for example the requirement that grass be kept cut shorter than 8 inches, snow be shoveled off of sidewalks, the prohibition against the accumulation of junk on a property, etc.

Non-residential buildings, owner occupied homes, or vacant buildings, under City Code as currently written, are only covered by the prohibition against dangerous and unsafe buildings and nuisance regulations. Until such a building deteriorates to the point where it is structurally unsound and/or its condition is a direct risk to those in or around such a building, City Code imposes no requirements for building maintenance/upkeep.

This gap in City Code leaves largely unregulated buildings with damage or deterioration which will, if left unaddressed, eventually cause the building to become dangerous, unsafe, and ultimately unusable. Current code also leaves unaddressed buildings which are unsightly or for which the physical condition of has a negative impact on the surrounding area, but which are not a direct health and safety hazard. Both of these situations have a negative impact on the vibrancy of individual neighborhoods and the community as a whole. Many communities have adopted regulations that address specific structural conditions in buildings which are having a negative impact on the surrounding area, will eventually lead to a dangerous and unsafe building, and/or will eventually create a direct health and safety hazard.

At the July 8, 2021 City Council in-depth meeting, staff made a presentation on how City Code addresses property conditions and the gap in current code and how this gap adversely affects the community. This presentation also covered regulations adopted in other communities to address these issues. After discussion City Council directed Staff to bring back a proposal to amend City Code to establish property maintenance standards for non-residential properties and all vacant buildings, both residential and non-residential; and bring back for discussion non-regulatory means to address maintenance issues with owner occupied homes.

While acknowledging that issues with maintenance with owner occupied homes do exist, it was the consensus of Council that a non-regulatory approach should be adopted to deal with the maintenance of owner-occupied properties. This decision was made as a result of concerns regarding the unintended consequences of regulatory enforcement property maintenance standards in situations where the underlying cause of the property maintenance issue is the homeowners lack of financial resources to make the needed repairs. Such as homeowners on a fixed income that may be unable to afford a new roof, to paint a badly peeling house, etc. In situations such as this where a homeowner cannot legitimately afford to fix the problem, financial penalties in the form of a citation may not resolve the issue, and may only make the situation worse. Fines ultimately may force the impacted to sell the property, or be displaced

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from the property which may sit and continue to deteriorate. The Community Development Department will at a future in-depth meeting make a presentation on non-regulatory means of dealing with owner-occupied property maintenance issues.

A regulatory approach to requiring property to be maintained to a set of standards is more appropriate for properties that do not provide housing to the property owner, as is the case with non-residential and vacant properties. Such an approach is built on the expectation that those owning these kinds of properties, have both the will and means to maintain them in accordance with the adopted standards. The existing Rental Housing Code is predicated on just such an expectation. The proposed regulatory language would extend this expectation to the owners non-residential and vacant properties.

For City Council's consideration, Staff has drafted, based on direction given by Council at the July 8th meeting, two new sections of City Sections of City Code, that would if adopted, establish maintenance standards for non-residential properties, and for properties, of all types that have been vacant for more than six months. The proposed regulations have three major objectives.

- To prevent a property from deteriorating to the point where it becomes a visual blight that decreases the quality of life and vibrancy of the surrounding area; and which discourages reinvestment in nearby properties.
- To prevent hazardous conditions from developing.
- To require that envelope of buildings maintained in a weathertight manner that preserves structural integrity and prevents demolition by neglect.

Properties will be determined to be vacant through visual inspection, review of utility records, posting for no occupancy and other means available. The City is authorized to inspect the exterior of all vacant and non-residential properties for compliance with the standard, inspection inside of buildings would require the cooperation of a warrant, however it is anticipated that staff will initially inspect properties that are known to be deteriorating and are creating hazardous conditions. In addition, inspections will be conducted in response to complaints. A notice of failed inspection will state that correction of violation will generally be completed within 60 days of notice of violation (automatic extensions for seasonal dependent work). Staff may grant extensions, and would in all cases where the property owner is making a good faith effort to address the issue. If a violation exists upon reinspection, the City may issue a municipal citation and may escalate such penalties up to and including a court order.

With the intent of achieving these objects the following specific standards regarding: exterior walls, building openings, roofs, appurtenances, fences, and retaining walls, are being proposed. To maintain consistency many of these proposed standards mirror those found in the Rental Housing Code, Chapter 4 of Title 16 of City. Proposed standards which are specifically geared towards non-residential or vacant properties are taken from other communities where they have been successfully implemented.

Exterior Walls

- All exterior walls, including foundation walls, shall be maintained free from holes, breaks, and loose or rotting materials.
- Peeling or flaking paint, and any other significant deterioration of building surface shall not affect more than 15% of the total square foot areas of any given building face.
- Materials and practices used on exterior surfaces shall be of standard quality and appearance. Polystyrene board, tyvek and insulation board are not acceptable permanent surfaces.

Building Openings

- Doors, windows, areaways and other openings shall be weathertight and secured against entry by birds, vermin and trespassers.
- All windows shall be maintained free of broken or missing glass.
- If a window, door, or other building opening is boarded up, the material used shall be:
 - At least one-half inch of plywood, or equivalent.
 - Tightly fitted to the opening and secured by screws or bolts.
 - Painted or treated the same color as the trim or structure.

Roofs, Gutters, and Downspouts

- The roof and flashing shall be sound, tight, and not have defects that admit rain.
- Roofing construction must be of standard permanent materials.
- Roof drains, gutters and downspouts shall be securely affixed to the structure.
- Fascia and soffit shall be maintained in a sound condition and free of holes and defects capable of admitting vermin.

Appurtenances

- All chimneys, cooling towers, smoke stacks and similar appurtenances shall be maintained structurally safe and sound, and in good repair.
- All cornices, belt courses, corbels, terra cotta trim, wall facings, and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.
- All overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes, and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition.
- Every stair, ramp, landing, balcony, porch, deck, or other walking surface shall be maintained in sound condition and good repair.
- Every exterior stairway, deck, porch, balcony, and all appurtenances attached thereto shall be maintained structurally sound, in good repair, with proper anchorage, and capable of supporting the imposed loads.

Fences

- All fences shall be structurally sound and free of leaning or loose elements or portions that may be considered deteriorating.

Retaining Walls

- All retaining walls shall be structurally sound and shall be constructed and maintained in a reasonably good state of repair and in such a manner as not to cause repeated flow of mud, gravel or debris upon any public sidewalk, street, alley, or adjoining property.

Subsection C of the proposed regulations lays out how adherence to these standards would be enforced.

1. Inspection

The City is authorized to inspect a property for compliance with the standards set forth in Section 16-5-2. Access to the interior of any structure shall be with owner consent or pursuant to an administrative search warrant.

2. Notice of Failed Inspection and Order to Correct Violations

If the initial inspection determines that the condition of the property violates any provision of this chapter, the Community Development Department shall give notice of the violation(s) to the owner of the property. Such notice shall:

- a. Be in writing;
- b. Include a description of the real estate sufficient for identification.
- c. Describe all violation(s) and remedial action(s) required.
- d. State that work to correct all violations and/or all required remedial actions must be completed within 60 days of said notice, except for seasonally dependent items, for which work must be completed by May 1st if all following conditions are present, otherwise work must be completed within 60 days of said notice.
 - i. Work is not necessary to correct an imminent danger;
 - ii. Work cannot be reasonably completed during periods of cold weather; and
 - iii. The date that the notice is issued falls between November 1st and March 1st.
- e. Advise that if a violation still exists upon reinspection that the City may pursue limitation issuance of a municipal infraction citation pursuant to Chapter 3 of all available legal remedies including without limitation issuance of a municipal infraction citation pursuant to Chapter 3 of Title 1 of City Code or pursuit of title to the property pursuant to Iowa Code §657A.10B.
- f. Be mailed to the owner(s) of the property.

3. Extension of an Order to Correct Violations

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- a. An owner may request an extension of time to complete any action to correct a violation or complete a required remedial action that cannot be completed by the deadline set forth of such a notice under the provision of Section 16-5-1(C)(2)(d) because of circumstances not of the owner's making or are beyond the owner's control.
Such request for an extension shall be made in writing to the Community Development Department at least five prior to the deadline imposed by the order to correct violations.
 - b. Approval of an extension to an order to correct violations may granted if the Community Development Department finds that:
 - i. Strict compliance with the deadline set by the order to correct violations is impractical;
 - ii. That the granting of such an extension does not violate the intent and purpose of City Code; and
 - iii. That granting the requested extension does not endanger the life, health, or safety or the integrity of the structure.
 - c. Such Approval shall be made in writing and state:
 - i. The new deadline to correct said violation(s).
 - ii. What specific code violation(s) that the extension applies to.
- 4. Failure to Comply With Notice of Violation**

If the owner fails to take corrective action within the time frame specified in the notice of violation the City reserves the right to pursue all available legal remedies including without limitation issuance of a municipal infraction citation pursuant to Chapter 3 of Title 1 of City Code or pursuit of title to the property pursuant to Iowa Code §657A.10B.

The attached draft regulations reflect the changes requested by the City Council at the February 10th in-depth meeting, and the second reading of this ordinance on April 21st.

CITY FINANCIAL IMPACT

None.

ATTACHMENTS

- 1. Ordinance
- 2. Proposed Non-residential and Vacant Property Maintenance Regulations (Attachment A)

ORDINANCE NO. 2022-0133

AN ORDINANCE ESTABLISHING VACANT PROPERTY AND NON-RESIDENTIAL PROPERTY MAINTENANCE REGULATIONS IN CHAPTER 5 OF TITLE 16 OF CITY CODE

WHEREAS, non-residential buildings, and vacant buildings, under City Code as currently written, are only covered by the prohibition against dangerous and unsafe buildings and nuisance regulations. Until a non-residential or vacant building deteriorates to the point where it is structurally unsound and/or its condition is direct risk to those in or around such a building, City Code imposes no requirements for building maintenance/upkeep;

WHEREAS, City Code leaves largely unregulated buildings with damage or deterioration which will if left unaddressed, eventually cause the building to become dangerous, unsafe, and ultimately unusable. Current code also leaves unaddressed buildings which are unsightly or for which the physical condition of has a negative impact on the surrounding area, but which are not a direct health and safety hazard;

WHEREAS, both of these situations have a negative impact of the vibrancy of individual neighborhoods and the community as a whole;

WHEREAS, to address this an ordinance establishing maintenance standards for non-residential properties, and for properties, of all types that have been vacant for more than six months has been drafted; and

WHEREAS, the proposed maintenance standards have three major objectives. To prevent a property from deteriorating to the point where it becomes a visual blight that decreases the quality of life and vibrancy of the surrounding area; and which discourages reinvestment in nearby properties. To prevent hazardous conditions from developing. To require that the envelope of buildings be maintained in a weathertight manner that preserves structural integrity and prevents demolition by neglect.

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

SECTION 1. Exhibit A as attached hereby to is adopted as Chapter 5 of Title 16 of the City Code of Muscatine, Iowa.

SECTION 2. 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 3. Any Ordinance or part thereof in conflict or inconsistent with the provisions of this Ordinance is repealed.

SECTION 4. 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 5th day of May, 2022.

Attest



By the City Council of the City
of Muscatine

A handwritten signature in black ink, appearing to read "Brad Bark".

[Brad Bark \(May 6, 2022 20:15 CDT\)](#)

Dr. Brad Bark, Mayor

A handwritten signature in black ink, appearing to read "Carol Webb".

[Carol Webb \(May 6, 2022 12:32 CDT\)](#)

Carol Webb, City Clerk

First Reading: 4/7/22

Second Reading: 4/21/22

Third Reading: 5/5/22

Publication:

Title 16 – Housing, Rental Housing, and Property Maintenance Regulations

Chapter 5 – Vacant and Non-Residential Property Maintenance Regulations

16-5-1 General Provisions

A. Intent

The health, welfare and safety of the public need to be protected from the ill effects of poor maintenance of vacant and non-residential property and all ramifications arising therefrom. Thus, the City of Muscatine establishes requirements for the maintenance of vacant and non-residential properties. The intent of these regulations is to prevent a property from deteriorating to the point where it becomes a visual blight that decreases the quality of life and vibrancy of the surrounding area and which discourages investment in nearby properties; to prevent hazardous conditions from developing; and to ensure that the building envelope is maintained in a weathertight manner that preserves structural integrity and prevents demolition by neglect

B. Scope

The provisions of this chapter shall apply to:

1. Any structure or portion thereof which has been unoccupied for a continuous period of time over one (1) year; or
2. Any non-residential structure or portion thereof, except for accessory structures on parcels that are only being used for residential purposes and which have not been unoccupied for a continuous period of time over one (1) year.

C. Violation and Enforcement

1. Inspection

The City is authorized to inspect a property for compliance with the standards set forth in Section 16-5-2. Access to the interior of any structure shall be with owner consent or pursuant to an administrative search warrant.

2. Notice of Failed Inspection and Order to Correct Violations

If the initial inspection determines that the condition of the property violates any provision of this chapter, the Community Development Department shall give notice of the violation(s) to the owner of the property. Such notice shall:

- a. Be in writing;
- b. Include a description of the real estate sufficient for identification.

- c. Describe any and all violation(s) and remedial action(s) required.
 - d. State that work to correct all violations and/or all required remedial actions must be completed within sixty (60) days of said notice, except for seasonally dependent item, for which work must be completed by May 1st if all following conditions are present, otherwise work must be completed within sixty (60) days of said notice:
 - i. Work is not necessary to correct an imminent danger;
 - ii. Work cannot be reasonably completed during periods of cold weather; and
 - iii. The date that the notice is issued falls between November 1st and March 1st.
 - e. Advise that if a violation still exists upon reinspection that the City may pursue limitation issuance of a municipal infraction citation pursuant to Chapter 3 of all available legal remedies including without limitation issuance of a municipal infraction citation pursuant to Chapter 3 of Title 1 of City Code or pursuit of title to the property pursuant to Iowa Code §657A.10B.
 - f. Be mailed to the owner(s) of the property.
- 3. Extension of an Order to Correct Violations**
- a. An owner may request an extension of time to complete any action to correct a violation or complete a required remedial action that cannot be completed by the deadline set forth of such a notice under the provision of Section 16-5-1(C)(2)(d) because of circumstances not of the owner's making or are beyond the owner's control.
 - b. Such request for an extension shall be made in writing to the Community Development Department at least five prior to the deadline imposed by the order to correct violations.
 - c. Approval of an extension to an order to correct violations may granted if the Community Development Department finds that:
 - i. Strict compliance with the deadline set by the order to correct violations is impractical;
 - ii. That the granting of such an extension does not violate the intent and purpose of City Code; and
 - iii. That granting the requested extension does not endanger the life, health, or safety or the integrity of the structure.
 - d. Such Approval shall be made in writing and state:
 - i. The new deadline to correct said violation(s).
 - ii. What specific code violation(s) that the extension applies to.

4. Failure to Comply with Notice of Violation

If the owner fails to take corrective action within the time frame specified in the notice of violation the City reserves the right to pursue all available legal remedies including without limitation issuance of a municipal infraction citation pursuant to Chapter 3 of Title 1 of City Code or pursuit of title to the property pursuant to Iowa Code §657A.10B.

D. Substandard Building

Any structure or portion thereof, or the premises on which the same is located, in which there exists a violation of City Code to the extent that the violation endangers the life, limb, health, property, safety, or welfare of the public thereof shall be deemed and hereby is declared to be a substandard building. In such instances, the notices and procedures established in Chapter 6 of Title 16 shall apply.

E. Other Codes and Regulations

This chapter shall be applied in conjunction with other chapters and titles of City Code.

F. Appeals

In any instance where a party is left aggrieved by an adverse action of the Community Development Department under this Chapter, such person shall have an opportunity to appeal the decision to the City Council or an equivalent Housing Appeals Board formed by Council as allowed by State law. The Council or equivalent board established by Council as allowed by law shall render all decisions and findings in writing to the appellant with a copy to the Building Official. Appeals shall be processed in accordance with the provisions contained in Section 16-3 of City Code.

16-5-2 - Property Maintenance Standards

All parcels containing a vacant or non-residential structure, as defined in Section 16-5-1(C), shall be maintained in accordance with the standards set forth in this Section.

A. Exterior Walls

3. All exterior walls, including foundation walls, shall be maintained free from holes, breaks, and loose or rotting materials.
4. Peeling or flaking paint, and any other significant deterioration of building surface shall not affect more than fifteen percent (15%) of the total square foot areas of any given building face.
5. Materials and practices used on exterior surfaces shall be of standard quality and appearance. Polystyrene board, tyvek and/or insulation board are not acceptable permanent surfaces.

B. Building Openings

1. Doors, windows, areaways and other openings shall be weathertight and secured against entry by birds, vermin and trespassers.
2. All windows shall be maintained free of broken or missing glass.
3. If a window, door, or other building opening is boarded up, the material used shall be:
 - a. At least one-half inch of plywood, or equivalent.
 - b. Tightly fitted to the opening and secured by screws or bolts.
 - c. Painted or treated the same color as the trim or structure.

C. Roofs, Gutters, and Downspouts

1. The roof and flashing shall be sound, tight, and not have defects that admit rain.
2. Roofing construction must be of standard permanent materials.
3. Fascia and soffit shall be maintained in a sound condition and free holes and defects capable of admitting vermin.
4. Roof drains, gutters and downspouts shall be securely affixed to the structure.

D. Appurtenances

1. All chimneys, cooling towers, smoke stacks and similar appurtenances shall be maintained structurally safe and sound, and in good repair.
2. All cornices, belt courses, corbels, terra cotta trim, wall facings, and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.
3. All overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes, and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition.
4. Every stair, ramp, landing, balcony, porch, deck, or other walking surface shall be maintained in sound condition and good repair.
5. Every exterior stairway, deck, porch, balcony, and all appurtenances attached thereto shall be maintained structurally sound, in good repair, with proper anchorage, and capable of supporting the imposed loads.

E. Fences

All fences shall be structurally sound and free of leaning or loose elements or portions that may be considered deteriorating.

F. Retaining Walls

Attachment A

All retaining walls shall be structurally sound and shall be constructed and maintained in a reasonably good state of repair and in such a manner as not to cause repeated flow of mud, gravel or debris upon any public sidewalk, street, alley, or adjoining property.

*** 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 126332

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

Chad C. [Signature]

Section: Notices & Legals
Category: 2635 Legal Ordinance
PUBLISHED ON: 05/13/2022

TOTAL AD COST: 34.41
FILED ON: 5/13/2022

Subscribed and sworn to before me by said affiant this 13 day of May 2022

Michelle Graham

Notary Public in and for Scott County, Iowa

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SECTION 1. Exhibit A as attached hereby to is adopted as Chapter 5 of Title 16 of the City Code of Muscatine, Iowa.
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SECTION 3. Any Ordinance or part thereof in conflict or inconsistent with the provisions of this Ordinance is repealed.
SECTION 4. 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 5th day of May, 2022.
Attest
By the City Council of the City of Muscatine
Dr. Brad Bark, Mayor
Carol Webb, City Clerk

