

Town of Malden

Nuisances

Ordinance No. 2021-1

Repeal Ordinance No(s) 359, 361, 388,
411, 463, 469, 497

Adopted: March 16, 2021

Effective: April 8, 2021

Mayor

Date

Attested by:

Clerk/Treasurer

Date

NUISANCES

Purpose and intent.

The purpose and intent of this chapter is to create and maintain a safe and healthy environment for the citizens of the town by identifying and eliminating the conditions that contribute to injury, illness, devaluation of property, and the incidence of crime through the existence of nuisance conditions on public and private property

Definitions.

“Determination of compliance” means a written determination by the town designee that the violation(s) stated in the warning, voluntary compliance agreement, notice and order, stop work order, or other applicable order have been sufficiently abated so as to comply with the ordinance.

“Graffiti” means an unauthorized marking, symbol, inscription, word, figure, design, or other inscribed material that has been placed upon any property through the use of paint, ink, dye, or any other substance capable of marking property.

“Impound” means to take and hold a vehicle in legal custody pursuant to law.

“Inoperable” means incapable of being operated legally on a public highway, including, but not limited to, not having a valid, current registration plate or a current certificate of registration.

“Junk vehicle” means a vehicle meeting at least three of the following criteria:

1. Is three years old or older;
2. Is extensively damaged, such damage including but not limited to any of the following: a broken window or windshield, or missing wheels, tires, motor, or transmission;
3. Is apparently inoperable;
4. Has an approximate fair market value equal only to the approximate value of the scrap in it.

“Ongoing criminal activity related to the premises” means that (1) criminal activity is or has been occurring at the premises; or (2) criminal activity is or has been occurring near the premises and such activity has a reasonable and proximate connection to the premises, whether by owners, occupants, or persons visiting such owners or occupants. Examples of conduct or actions that constitute criminal activity occurring at or near the premises of the subject property include, but are not limited to, the following:

1. Service of a search warrant by law enforcement personnel; or

2. Arrest of one or more individuals by law enforcement personnel during any 24-hour period; or
3. Commission of a misdemeanor, gross misdemeanor, or felony at or near the premises and where there is a reasonable and proximate connection between the crime or criminal and the premises, including those visiting the owner or occupants of the premises; or
4. Visits by law enforcement personnel which occur based upon a reasonable belief by law enforcement that a crime is occurring or has occurred, but which do not result in any of the actions identified in subsections (1) through (3) of this definition; provided, that visits alone may not form the sole basis for determining a premises to be a chronic nuisance premises.

For purposes of this definition, service of warrants, arrests, or commission of misdemeanor or felony domestic violence shall not be considered criminal activity.

“Person(s) responsible for a junk vehicle nuisance violation” means any one or more of the following:

1. The land owner where the junk vehicle is located as shown on the last equalized assessment roll; or
2. The last registered owner of the vehicle, unless the owner in the transfer of ownership of the vehicle has complied with state law; or
3. The legal owner of the vehicle.

“Person(s) responsible for a nuisance violation” means the person or persons who caused the violation, if that can be determined, and/or the owner, lessor, tenant, or other person(s) entitled to control, use, and/or occupancy of the property and the abutting public rights-of-way.

Compliance, authority and administration.

In order to discourage public nuisances and otherwise promote compliance with the code, the town designee may, in response to field observations, determine that violations of the code have occurred or are occurring, and may utilize any of the compliance provisions set forth in the code.

Nuisances prohibited.

No person, firm, or entity shall erect, contrive, cause, continue, maintain, or permit to exist any public nuisance within the City including on the property of any person, firm, or entity or upon any public rights-of-way abutting a person, firm, or entity’s property. Prohibited public nuisances include, but are not limited to:

- A. Vegetation.

1. Any vegetation, or parts thereof, which hang lower than eight feet above any public walkway or sidewalk; or hang lower than 14 feet above any public street; or which are growing in such a manner as to obstruct or impair the free and full use of any public walkway, sidewalk, or street; or violate town clearview triangle regulations. The town shall be responsible for maintaining all vegetation placed by the town adjacent to a public walkway, sidewalk, or street.

2. Any growth of noxious weeds or toxic vegetation shall be subject to Chapter [16-750 WAC](#) as currently adopted and hereafter amended.

B. Buildings, Structures, Fences. Buildings or portions thereof which are deemed dangerous or unfit pursuant to the nuisance ordinance (including all building and property maintenance codes and regulations as currently adopted and hereafter amended).

C. Public Walkway.

1. Any protrusion, awning, or overhang that inhibits or obstructs use of a public walkway or sidewalk.

2. Any object, construction, or damage that inhibits or obstructs the surface use of a public walkway or sidewalk.

D. Accumulations of Materials, Garbage, Recyclables, Furniture, Machinery.

1. Building and Construction Materials. Any accumulation, stack, or pile of building or construction materials, including but not limited to metal, wood, wire, electrical, or plumbing materials, not associated with a current, in-progress project and not in a lawful storage structure or container. This provision does not apply to a designated contractor's yard.

2. Garbage, Recyclables, Compost, and Infestations.

a. Garbage or recyclables not properly stored in a receptacle with a tight-fitting lid.

b. Any accumulation of broken or neglected items, litter, salvage materials, or junk not in an approved enclosed structure.

c. Creating or maintaining any accumulation of matter, including but not limited to foodstuffs or dead vegetation (excluding properly maintained residential compost piles).

3. Furniture, Appliances, Furnishings, and Equipment.

a. Any broken or discarded household furniture, furnishings, equipment, or appliance not in an approved enclosed structure.

b. Any enclosure which may entrap a human or an animal, including accessible refrigeration appliances that have not had the doors secured or removed.

4. Machinery and Equipment. Any broken or inoperable accumulation of, or part of, machinery or equipment not in an approved enclosed structure. This shall include such machinery and equipment as boats, jet-skis, snowmobiles, aircraft, and the like, but shall not include junk vehicles, which are regulated elsewhere in this code.

E. Fire Hazards. Any stack or accumulation of newspapers, garbage, dead vegetation (excluding properly maintained compost piles), overgrown vegetation, processed cardboard, or any other paper, cloth, or processed wood products left in a manner that poses a substantial risk of combustion or the spread of fire. Open burning is allowed except when a "no burn" restriction is in place per the Malden Fire Chief and hours of burning are 7:00am until one hour before sunset. All fires except for recreational fires shall be no more than 4 ft x 4 ft x 4 ft in area. Recreational fires shall be in a fire pit or ring, not on the ground and be no more than 3 feet in diameter and 2 feet high. A shovel and hose should be readily available with all fires. Burning in barrels is not allowed. State laws must be followed.

F. Toxic or Caustic Substances. Improper storage or keeping of any toxic, flammable, or caustic substances or materials.

G. Smoke, Soot, or Odors. Allowing the escape or emission of any harmful smoke, soot, fumes, gases, or odors which are offensive or harmful to a reasonable person.

H. Bodies of Water.

1. All stagnant, pooled water in which mosquitoes, flies, or other insects may multiply, excluding any town-approved structure related to storm drainage systems.

2. The polluting of any waterway, well, or body of water which is not subject to the jurisdiction of another federal, state, county, special purpose district or city agency.

I. Holes. Any excavated or naturally occurring uncovered holes which are not marked, guarded, or otherwise secured, and which constitute a concealed danger.

J. Attractive Nuisances. Any accessible nuisance which is attractive to children including, but not limited to, unattended machinery or equipment, unsecured abandoned or vacant buildings, open and unattended vehicle trunks, or other unguarded conditions or situations that could injure or trap a child.

K. Noise.

1. Any noise or sound that, originating within a residential zone, intrudes into the property of another person that exceeds the maximum permissible noise levels pursuant to Chapter [173-60](#) WAC, as currently adopted and hereafter amended. Such noise or sound may include, but is not limited to, noise or sound created by use of a radio, television set, musical instrument, sound amplifier, or other device capable of producing or reproducing noise or sound; or in connection with the starting, operation, repair, rebuilding, or testing of any vehicle, off-highway machinery or equipment, or internal combustion engine.

2. The following shall be exempt from the provisions of the nuisance ordinance:

- a. Normal use of public rights-of-way;
- b. Sounds created by motor vehicles when regulated by Chapter [173-62](#) WAC;
- c. Sounds created by warning devices not operating continuously for more than five minutes, or bells, chimes, or carillons;
- e. Sounds created by safety and protective devices where noise suppression would defeat the intent of the device or is not economically feasible;
- f. Sounds created by emergency equipment and work necessary in the interest of law enforcement or for health, safety or welfare of the community;
- g. Sounds originating from officially sanctioned parades and other public events;
- h. Sounds created by motor vehicles licensed or unlicensed when operated off public highways, except when such sounds are made in or adjacent to residential property where human beings reside or sleep;
- i. Sounds originating from existing natural gas transmission and distribution facilities;
- j. Sounds created in conjunction with public work projects or public work maintenance operations executed at the cost of the federal government, state or municipality;
- k. Sounds created in conjunction with the collection of solid waste;
- l. Sounds originating from organized activities occurring in public parks, playgrounds, gymnasiums, and other public facilities and public recreational facilities during hours of operation;
- m. Sounds originating from agricultural activities.

3. The following shall be exempt from provisions of this ordinance between the hours of 7:00 a.m. and 10:00 p.m.:

a. Sounds originating from residential property relating to temporary projects for the repair or maintenance of homes, grounds, and appurtenances;

b. Sounds created by the installation or repair of essential utility services.

L. Dust. Any disturbance of any land area, or permitting the same, without taking affirmative measures to suppress and minimize the blowing and scattering of dust, which unreasonably interferes with the peace, comfort, or repose of a reasonable person. This provision does not include permitted agricultural activities.

M. Junk Vehicles. All junk vehicles, or parts thereof, placed, stored, or permitted to be located on private property within the town limits. Nuisance regulations do not apply to:

1. Any vehicle or part thereof that is completely enclosed within a lawful structure so that it is not visible from the street or other public or private property;

2. Any vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer, and the private property is fenced pursuant to RCW [46.80.130](#);

3. A junk vehicle does not include a vehicle which is in the process of being repaired, as evidenced by the good faith efforts of the vehicle owner. This exception shall include having up to one “parts” vehicle, from which parts are being salvaged concurrent with the repair process for the vehicle being excepted from compliance in this section. Good faith efforts of repair may include producing invoices showing work or parts purchased for repair or renovation within 30 days prior to issuance of the notice of violation, or a declaration under penalty of perjury that the vehicle is in the process of being repaired and has been worked on within 30 days prior to issuance of the notice of violation. This exception allows up to 60 days for good faith repair. Upon good cause shown, the town designee shall have the discretion to grant one additional 60-day exception period pursuant to the code. Under no circumstance shall any good faith efforts of repair extend for more than 120 days, after which time this exception shall no longer apply. This exception shall apply to one vehicle and one parts vehicle per parcel of land per calendar year;

4. There shall be allowed as exceptions to the code up to two junk vehicles in the residential zones, so long as they are completely sight-screened by maintained landscaping, a maintained landscaped berm, or fencing, as allowed pursuant to any adopted codes for landscaping, berm, or fencing requirements.

O. Graffiti. Any graffiti on public or private property.

P. Development Code Violations.

Chronic nuisances.

A. No person, firm, or entity shall erect, contrive, cause, continue, maintain, or permit to exist any chronic nuisance within the town including on the property of any person, firm, or entity or upon any public rights-of-way abutting a person's, firm's, or entity's property. A parcel or lot of real property, a building, including but not limited to the structure or any separate part of portion thereof, whether permanent or not, or the ground itself, a unit within a building, or a mobile home, manufactured home, or recreational vehicle (collectively referred to as "property") shall constitute a chronic nuisance when any of the following conditions occur:

1. During any continuous 12-month period, the property in question:

a. A final determination has been made by the town that conditions on the property constitute a nuisance.

b. Has four or more occurrences of ongoing criminal activity related to the premises;
or

2. During any 12-month period, the property in question has five or more occurrences of ongoing criminal activity related to the premises.

B. Defenses. It shall be a defense against a declaration of chronic nuisance if the person alleged to be responsible for the nuisance (1) affirmatively engages in reasonable and ongoing efforts to remedy the nuisance and/or ongoing criminal activity; and (2) is not the perpetrator nor allows the perpetration of the nuisance or ongoing criminal activities.