



CITY OF IONE CITY COUNCIL STAFF REPORT



FOR THE MEETING OF: APRIL 7, 2009

DATE: APRIL 2, 2009

TO: MAYOR ARD AND CITY COUNCIL

FROM: KIMBERLY A. KERR, CITY MANAGER

SUBJECT: PUBLIC HEARING ON ORDINANCE NO. 424 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IONE AMENDING IONE MUNICIPAL CODE, TITLE 8 – “HEALTH AND SAFETY”, BY CREATING AND ADDING CHAPTER 8.06 – “VACANT, ABANDONED, DISTRESSED OR FORECLOSED PROPERTIES”

RECOMMENDED ACTION:

That the City Council:

1. Receive staff report;
2. Waive first reading, by substitution of title only, of Ordinance No. 424, An Ordinance of the City Council of the City of Ione Amending Ione Municipal Code, Title 8 – “Health and Safety”, by Creating and Amending Chapter 8.06 – “Vacant, Abandoned, Distressed or Foreclosed Properties”;
3. Open Public Hearing;
4. Close Public Hearing; and
5. Schedule second reading of Ordinance No. 424 for April 21, 2009.

SOURCE OF FUNDING: All Funds

TYPE OF ITEM:

_____ Consent
 _____ Departmental
 xxx _____ Public Hearing
 _____ Other _____

City Council for the City of Ione

Upon motion of Council Member
 Seconded by Council Member
 And carried _____ by those members present,
 The Council hereby adopts the recommended action contained in this report.

PREVIOUS ACTION/REFERRAL:

Council Order No. _____

Meeting of: _____

Dated: _____

Janice Traverso, City Clerk

By: _____

DISCUSSION:

Staff has reviewed the City’s Municipal Code regarding code enforcement issues and determined that there was a need to improve the City’s ability to do Administrative Enforcement (Code Enforcement).

Based on that review staff has worked with the Building Division, Police Department, Fire Department, Planning Department, and the City Attorney to develop a comprehensive Administrative Enforcement process including additional Chapters, such as Vacant, Abandoned, Distressed or Foreclosed Properties. Ordinance No. 424 is needed to add Chapter 8.06 for consistency with the new Code Enforcement Administrative Procedures.

There is a problem with Sewer Accounts when a property with a sewer connection goes into foreclosure as well as keeping the property maintained pending disposition of the property.

Based on the above information, staff is recommending that the City Council conduct a Public Hearing on Ordinance No. 424 and schedule the second reading for April 21, 2009.

FINANCIAL IMPACT:

There are no costs associated with the implementation of the Ordinance other than the cost for the Public Hearing notice and implementation of the Ordinance.

OTHER AGENCY INVOLVEMENT:

City Attorney’s Office, Building Department, Police Department, Planning Department, and Fire Department

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The City Council could elect to leave the current policies in place. However, staff is recommending that the revised policies be adopted to ensure that the City’s policies reflect the current status of the law and provide a process to address code violations in various areas.

ATTACHMENTS:

Ordinance No. 424 – An Ordinance of the City Council of the City of Ione Amending Ione Municipal Code, Title 8 – “Health and Safety”, by Creating and Amending Chapter 8.06 – “Vacant, Abandoned, Distressed or Foreclosed Properties”

ORDINANCE NO. _____
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IONE
AMENDING IONE MUNICIPAL CODE, TITLE 8 – “HEALTH AND SAFETY”, BY
CREATING AND ADDING CHAPTER 8.06 –
“VACANT, ABANDONED, DISTRESSED OR FORECLOSED PROPERTIES”

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IONE AS FOLLOWS:

Chapter 8.06 “VACANT, ABANDONED, DISTRESSED OR FORECLOSED
PROPERTIES” is hereby added to Ione Municipal Code Title 8 – “HEALTH AND
SAFETY,” as follows:

CHAPTER 8.06

VACANT, ABANDONED, DISTRESSED OR FORECLOSED PROPERTIES

- Section 8.06.010 Purpose and scope.
- Section 8.06.020 Definitions.
- Section 8.06.030 Registration of abandoned or vacant properties.
- Section 8.06.040 Maintenance requirements.
- Section 8.06.050 Security requirements.
- Section 8.06.060 Additional authority.
- Section 8.06.070 Enforcement for violations of this chapter.
- Section 8.06.080 Alternative monetary penalties.

Section 8.06.010 Purpose and scope.

Neglected, vacant and abandoned properties are a major source of blight. Such properties may attract transients or criminal activity and create fire, health and safety risks from primitive cooking and heating or the dumping of junk, debris or hazardous material on the property. Neglected, vacant and abandoned properties are frequently overgrown with weeds or vegetation and are subject to vandalism and graffiti. Additionally, such properties may present an attractive nuisance to children. As a result of the hazards and blight created by neglected vacant and abandoned properties, neighboring property owners are denied the full use and enjoyment of their property. Because of the increases in residential property foreclosures in this state, the City finds that there is an urgent need to implement a process by which neglected, vacant and abandoned properties are monitored, and ensure that the costs of maintaining and securing such properties is borne by the owners, rather than the community.

For the purposes of this Chapter, the following words and phrases are defined as set forth below:

- A. **ABANDONED PROPERTY:** means real property that is vacant and either: (1) under a current notice of default; (2) under a current notice of trustee's sale (3) pending a tax assessor's lien sale; (4) the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure; or (5) transferred under a deed in lieu of a foreclosure sale.
- B. **BENEFICIARY:** means a lender or holder of a note secured by a deed of trust. When any act is required of the beneficiary and/or the trustee by this Chapter, both are responsible for performing such act and may be charged with a violation of this Code for failure to act.
- C. **DEED OF TRUST:** means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan and often used in California instead of a mortgage. This term shall include any and all subsequent deeds of trust, i.e., second trust deed, third trust deed, etc.
- D. **DISTRESSED:** means a property that is legally occupied, and either: (1) under a current notice of default; (2) under a current notice of trustee's sale (3) pending a tax assessor's lien sale; (4) the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure; or (5) transferred under a deed in lieu of a foreclosure sale.
- E. **EVIDENCE OF VACANCY:** means any condition that, on its own or combined with other existing conditions, would lead a reasonable person to believe that a property is vacant and not occupied by authorized persons. Such conditions include, but are not limited to, overgrown and/or dead vegetation, accumulation of newspapers, circulars, flyers and/or mail, past due utility notices or disconnected utilities, accumulation of trash, junk and/or debris, the absence of window coverings such as curtains, blinds and/or shutters, the absence of furnishings and/or personal items consistent with residential habitation, and statements by neighbors, passersby, delivery agents, government employees that the property is vacant.
- F. **LEGAL OWNER:** means an owner of residential property purchased by that owner at a foreclosure sale or acquired by that owner through foreclosure under a mortgage or deed of trust, as the term is used in California Civil Code section 2929.3.
- G. **LOCAL:** means within 45 miles of a property subject to this Chapter.
- H. **NOTICE OF DEFAULT:** means a recorded notice that a default has occurred under a deed of trust and that the beneficiary intends to proceed with a trustee's sale.

- I. OUT OF AREA: means in excess of 45 miles of the subject property.
- J. OWNER: means the person having recorded title to the property at any given point in time the record is provided by the Amador County Recorder's Office.
- K. PROPERTY: means any unimproved or improved real property, or portion thereof, situated in the City, including the buildings or structures located thereon.
- L. RESPONSIBLE PERSON: means any person, partnership, association, corporation or fiduciary having legal or equitable title to or any interest in any real property. This term includes trustees and beneficiaries of a deed of trust on the property and any other lien holder on the property.
- M. SECURE, SECURING: means such measures as may be directed by the City Manager, Police Chief, Fire Chief, Finance Director, or their authorized agents, that assist in rendering the property inaccessible to unauthorized persons, including, but not limited to, the repairing of fences and walls, chaining or padlocking of gates, the repairing or boarding of doors, windows and/or other openings. If boarding of the property is required, such boarding shall be completed to a minimum of the current securing standards of the Department of Housing and Urban Development.
- N. TRUSTEE: means the person, firm or corporation holding a deed of trust on a property. When any act is required of the beneficiary and/or the trustee by this Chapter, both are responsible for performing such act and may be charged with a violation of this Code for failure to act.
- O. TRUSTOR: means a borrower under a deed of trust who deeds property to a trustee as security for the payment of a debt.
- P. VACANT: means a property that is not occupied by authorized persons.

Section 8.06.030 Registration of abandoned or vacant properties.

- A. All abandoned or vacant properties shall be registered with the City in accordance with this Section. Any beneficiary and/or trustee who holds a deed of trust on a property located within the City shall, upon default by the trustor, perform an inspection of the property that is security for that deed of trust. This inspection shall be performed prior to recordation of a notice of default with the Amador County Recorder's Office. If the property is found to be vacant, or shows evidence of vacancy, such property shall be deemed abandoned for purposes of this Chapter, and the beneficiary and/or trustee shall, within ten (10) days of the inspection, register the property with the City Clerk's Office, on a form provided by the City. If the property is occupied by authorized persons at the time of inspection, the property shall be re-inspected on a monthly basis until (a) the default is remedied by the trustor, (b) the foreclosure is completed and the ownership is transferred to a new owner who is not the former beneficiary and/or

trustee, or (c) the property is found to be vacant, at which time it shall be registered with the City Clerk's Office within ten (10) days of the inspection.

- B. Registration under this Chapter shall include the following information for both the beneficiary and trustee:
 - 1. The street address (not a P.O. Box) of the corporation or individual, and if different, the mailing address.
 - 2. A direct contact name and telephone number for the person handling the deed of trust and/or foreclosure
 - 3. The local property manager responsible for the security and maintenance of the property, if the beneficiary or trustee is located out of the area.
- C. The registration shall also include the annual registration fee, as established by City Council resolution.
- D. Registration of a property shall be valid for one year from the date that the property is registered with the City. Registration with the City shall be annually renewed prior to the expiration of the current registration.
- E. Any change in the information required by subsection B of this Section must be reported to the City within ten days of that change.

Section 8.06.040 Maintenance requirements.

- A. Responsible persons, including beneficiaries and/or trustees, shall maintain vacant, abandoned or distressed properties located within City limits, as set forth below:
 - 1. The property shall be kept free of items that show evidence that the property is vacant or abandoned, including, but not limited to, weeds, dry brush, dead or overgrown vegetation, trash, junk, debris, building materials, accumulated newspapers, circulars, flyers, notices, discarded personal items, such as furniture, clothing, appliances, and printed material.
 - 2. The property, or structures thereon, shall be maintained free of graffiti, tagging or similar markings by removal or painting over with an exterior grade of paint that matches the color of the exterior of the affected structure or property.
 - 3. Visible front and side yards of such property shall be acceptably landscaped and maintained.

(i) Acceptable landscaping includes, but is not limited to, grass or similar ground cover; bushes, shrubs, hedges or similar plantings; and decorative rock or bark. Unacceptable landscaping includes, but is not limited to, weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch, indoor-outdoor carpet or other similar materials.

(ii) Acceptable maintenance includes, but is not limited to, regular watering, irrigation, mowing, cutting, trimming or pruning of vegetation and removal thereof.

4. Pools, spas, and hot tubs shall either be (1) kept in working order so that the water remains clear and free of pollutants, debris, mosquitoes, mosquito larvae or other similar pests, or (2) drained and kept dry. All properties with pools, spas, or hot tubs must comply with security fencing requirements mandated by California law.
5. If any vacant or abandoned property is owned by an out of area beneficiary, trustee, or owner, such person or entity shall contract with a local property management company to perform maintenance required by this Section.
6. Compliance with this Chapter does not relieve any responsible person of any other obligations set forth in this Code or other state and federal laws, or covenants conditions and restrictions, or any homeowners' association rules that may apply to the property.

Section 8.06.050 Security requirements.

- A. Responsible persons shall secure all vacant and abandoned properties against unauthorized entry. This includes, but is not limited to, closing and locking all windows, doors (including sliding doors and garage doors), gates, and any other openings of such size that would allow a child to access the interior of the property and buildings or structures thereon. If doors or windows cannot be secured by other means, they may be boarded.
- B. If any vacant or abandoned property is owned by an out of area beneficiary, trustee, or owner, such person or entity shall contract with a local property management company to perform weekly inspections to ensure that the requirements of this Chapter, and any other applicable laws, are being met.
- C. All vacant and abandoned property shall be posted with the name and a 24-hour contact phone number for the trustee, beneficiary, owner or local property management company responsible for the maintenance and security of the property. The posting shall conform to the following requirements:

1. The posting shall be 18" x 24" and shall be of a font that is legible from a distance of 45 feet.
2. The posting shall state "THIS PROPERTY MANAGED BY _____. TO REPORT PROBLEMS OR CONCERNS, CALL _____."
3. The posting may be placed in any of the following locations, so long as the posting is visible from the street facing the front of the property: (1) on the interior of a window, (2) secured to the exterior of the building, or (3) on a stake of sufficient size to support the posting. Any exterior posing shall be constructed of and printed with weather-resistant materials.

Section 8.06.060 Additional authority.

In addition to the enforcement remedies established in Chapter 1.10 (Administrative Enforcement Provisions), the City Manager, Police Chief, Fire Chief, Finance Director, or their authorized agents shall have the authority to require a responsible person for any property subject to this Chapter to implement additional maintenance and/or security measures, including, but not limited to, installing additional security lighting, increasing on-site inspection frequency, disconnecting utilities and removing the meter boxes, or other measures as may be reasonably required to arrest the decline of the property and prevent unauthorized entry.

Section 8.06.070 Enforcement for violations of this chapter.

Violations of this Chapter may be enforced pursuant to Chapter 1.10 (Administrative Enforcement Provisions).

Section 8.06.080 Alternative monetary penalties.

- A. This Section is intended to carry out the provisions of California Civil Code section 2929.3. Nothing in this Section shall be interpreted or implemented in a manner that is inconsistent with State law. If there is a conflict between the provisions of State law and this Section, State law shall control.
- B. The City may elect to impose monetary penalties on a legal owner, pursuant to California Civil Code section 2929.3, if that legal owner fails to maintain vacant residential property that is either purchased at a foreclosure sale or acquired through foreclosure under a mortgage or deed of trust.
 1. For purposes of this Section, "fails to maintain" means failing to care for the exterior of the property, including, but not limited to, permitting excess foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers, squatters or other unauthorized

persons from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water or other conditions that create a public nuisance.

- C. The City may impose a fine of up to one thousand (\$1000.00) per day for each day that the legal owner fails to maintain the property as required by this Section, commencing on the day following the expiration of the period to remedy the violation, as established by the City in subsection D of this Section.
1. In determining the amount of the fine, the City shall take into consideration any timely and good faith efforts by the legal owner to remedy the violation.
 2. Fines and penalties collected pursuant to this Section shall be directed toward local nuisance abatement programs.
 3. Pursuant to Section 2929.3 of the California Civil Code, the City may not impose fines on a legal owner under both this Section and any other local ordinance. However, Section 2929.3 of the California Civil Code shall not preempt any local ordinance.
 4. Notwithstanding subsection C(3) of this section, the rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.
- D. If the City imposes a fine pursuant to this Section, the City shall give notice of the alleged violation to the legal owner. The notice shall include a description of the conditions that gave rise to the alleged violation, and state the City's intent to assess a civil fine if action to correct the violation is not commenced within a period of not less than 14 days and completed within a period of not less than 30 days.
1. The notice shall be mailed to the address provided in the deed or other instrument as specified in subdivision (a) of Section 27321.5 of the Government Code, or, if none, to the return address provided on the deed or other instrument.
 2. The City may provide less than 30 days' notice to remedy a condition, if the City determines that a specific condition of the property threatens public health or safety and the notice of violation states that there is a threat to public health or safety and lists the required time to correct the violation.
- E. If the City imposes a fine pursuant to this Section, the City shall set an administrative hearing at which the legal owner may contest the fine. The City shall set the hearing within ten days after the expiration of the period in which the legal owner must correct the violation, as provided in the notice issued pursuant to subsection (D) of this Section. The administrative hearing notices and

procedures shall be governed by the procedures set forth in Article VI of Chapter 1.10 (Administrative enforcement procedures).

SECTION 2. CONFLICT. All ordinances or parts of ordinances in this Code that conflict with this Chapter are repealed insofar as such conflict may exist.

SECTION 3. SEVERABILITY. If any Chapter, article, subsection or subdivision thereof, provision, sentence, clause or phrase of this code, or any application thereof, is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the remaining provisions of this code, which can be given effect without the invalid portions and, therefore, such invalid portions are declared to be severable. The City Council hereby declares that it would have enacted this Code and each of its articles, sections, subsections, or subdivisions thereof, provisions, sentences, clauses or phrases irrespective of the fact that one or more of them is declared invalid.

SECTION 4. EFFECTIVE DATE AND PUBLICATION. This Ordinance shall take effect thirty (30) days after its adoption. The City Clerk is directed to publish this ordinance in a newspaper of general circulation in the City of Ione. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to Government Code Section 36933(c)(1).

PASSED AND ADOPTED by the City Council of the City of Ione this _____ day of _____, 2009, by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS

MAYOR of the CITY OF IONE

ATTEST:

JANICE TRAVERSO, CITY CLERK