



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. 425 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IONE AMENDING IONE MUNICIPAL CODE, TITLE 8 – “HEALTH AND SAFETY”, BY AMENDING CHAPTER 8.12 “ABANDONED VEHICLE ABATEMENT”

RECOMMENDED ACTION:

That the City Council:

1. Receive staff report;
2. Waive first reading, by substitution of title only, of Ordinance No. 425, an Ordinance of the City Council of the City of Ione Amending Ione Municipal Code, Title 8 – Health and Safety, by Amending Chapter 8.12 “Abandoned Vehicle Abatement”;
3. Open Public Hearing;
4. Close Public Hearing; and
5. Schedule second reading of Ordinance No. 425 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 Abandoned Vehicle Abatement. Ordinance #425 is needed to update Chapter 8.12 for consistency with the new Code Enforcement Administrative Procedures.

The Police Department currently implements the Abandoned Vehicle Abatement section of the Municipal Code and will continue to handle this section.

Based on the above information, staff is recommending that the City Council conduct a Public Hearing on Ordinance No. 425 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 Administrative Procedures.

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. 426 – Ordinance No. 425, an Ordinance of the City Council of the City of Ione Amending Ione Municipal Code, Title 8 – Health and Safety, by Amending Chapter 8.12 “Abandoned Vehicle Abatement

ORDINANCE NO. 425
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IONE
AMENDING IONE MUNICIPAL CODE, TITLE 8 – “HEALTH AND SAFETY”, BY
AMENDING CHAPTER 8.12 “ABANDONED VEHICLE ABATEMENT”

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

SECTION 1. TITLE 8, CHAPTER 8.12 “ABANDONED VEHICLE ABATEMENT”
is hereby amended as follows:

Chapter 8.12

ABANDONED VEHICLE ABATEMENT

Sections:

- | | |
|----------|---|
| 8.12.010 | Definitions. |
| 8.12.020 | Declaration of nuisance. |
| 8.12.030 | Exceptions. |
| 8.12.040 | Chapter not exclusive regulation. |
| 8.12.050 | Enforcement authority—Right of entry. |
| 8.12.060 | Contract or franchise--Right of entry for removal of a vehicle. |
| 8.12.070 | Administrative costs determination. |
| 8.12.080 | Notice of intention to abate and remove vehicle. |
| 8.12.090 | Conduct of hearing. |
| 8.12.100 | Appeal to City Council. |
| 8.12.110 | Order of vehicle removal—Assessment of costs. |
| 8.12.120 | Exceptions to hearing requirement. |
| 8.12.130 | Disposition of vehicle of parts. |
| 8.12.140 | Notice to Department of Motor Vehicles. |
| 8.12.150 | Collection of costs. |
| 8.12.160 | Refusal to remove vehicle—Misdemeanor. |

8.12.010 Definitions.

As used in this chapter:

"Abandoned vehicle" means a motor vehicle left on a highway, public property, or private property in such inoperable or neglected condition that it may be reasonably inferred that the owner's intention is to relinquish all further rights or interests in the vehicle.

A vehicle is presumed to be "abandoned" when it is left on a highway for seventy-two hours or more without being moved, is parked, resting, or otherwise immobilized on any highway or public right-of-way and lacks an engine, transmission, wheels, tires, doors, windshield, or any other part or equipment necessary to operate safely on the highway. Vehicles found in such a condition on a

highway or public right-of-way are presumed to be a hazard to public health, safety, and welfare and may be removed immediately upon discovery by a peace officer or other designated employee.

"Designated employee" means a representative of the City of Lone Police Department.

"Dismantled vehicle" means any motor vehicle that is partially or wholly disassembled.

"Highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. "Highway" includes "street."

"Inoperative vehicle" means any motor vehicle that cannot move under its own power.

"Public property" means and includes "streets" and "highways."

"Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks.

"Wrecked vehicle" means any motor vehicle that is damaged to such an extent that it cannot lawfully be operated upon the highway. A vehicle which has been wrecked in a traffic collision, then removed from the roadway to a storage facility, but not yet claimed by its owner, will not be considered an abandoned vehicle. (Ord. 346 §2(part), 1994).

8.12.020 Declaration of nuisance.

In addition to and in accordance with the determination made and the authority granted by the state under Section 22660 of the Vehicle Code to remove abandoned, wrecked, dismantled or inoperative vehicles or parts thereof as public nuisances, the City Council makes the following findings and declarations:

The accumulation and storage of abandoned, wrecked, dismantled or inoperative vehicles or parts thereof on private or public property is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating hazard to the health and safety of children, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle or part thereof, on private or public property, except as expressly hereinafter permitted, is declared to constitute a public nuisance which may be abated as such in this chapter. (Ord. 346 §2(part), 1994).

8.12.030 Exceptions.

This chapter shall not apply to:

- A. A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;
- B. Vehicles or parts not completely enclosed, but completely screened by a solid wood or masonry fence which either complies with local jurisdiction or, if none, is approved by the City. The exception is limited to an area not to exceed one hundred twenty square feet or two vehicles;
- C. A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a licensed junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise;
- D. Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under the provisions of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code and this chapter. (Ord. 346 §2(part), 1994).

8.12.040 Chapter not exclusive regulation.

The provisions of this chapter are not the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles. It is in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the City, the state or any other legal entity or agency having jurisdiction. (Ord. 346 §2(part), 1994).

8.12.050 Enforcement authority—Right of entry.

Except as otherwise provided herein, the provisions of this chapter may be administered and enforced by the lone Police Department. In enforcing this chapter lone Police Officers may enter upon, private or public property to examine a vehicle or parts thereof, or obtain information as to the identity of a vehicle (and to remove or cause the removal of a vehicle or parts thereof) declared to be a nuisance pursuant to this chapter, provided, however, that such entry shall be made in a lawful manner. (Ord. 346 §2(part), 1994).

8.12.060 Contract or franchise—Right of entry for removal of a vehicle.

Pursuant to section 22663 of the California Government Code, when the City has contracted with or granted a franchise to any person or persons, such person or persons shall be authorized to enter upon private property or public property to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance

pursuant to this chapter, provided, however, that such entry shall be made in a lawful manner. (Ord. 346 §2(part), 1994).

8.12.070 Administrative costs determination.

The City Council shall from time to time determine and fix an amount to be assessed as administrative costs (excluding the actual cost of removal of any vehicle or part thereof) under this chapter. Such amount shall be based on an analysis of the staff time reasonably necessary to process each case involving the removal of a vehicle, and shall not exceed the good-faith estimate of such administrative costs based on such analysis. (Ord. 346 §2(part), 1994).

8.12.080 Notice of intention to abate and remove vehicle.

Unless both the property owner and the owner of the vehicle have signed releases authorizing removal and waiving further interest in the vehicle or part thereof, not less than ten days before the date of intended removal of the vehicle pursuant to the provisions of this chapter, a notice of intention to abate and remove the abandoned, wrecked, dismantled, or inoperative vehicle shall be sent by the designated employee by registered or certified mail, to the owner of the land on which the vehicle is located, as shown on the last equalized assessment roll, and to the last registered and legal owners of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. It shall not be a prerequisite to removal of the vehicle pursuant to this section that the return receipt be received showing delivery of the notice. Such notice of intention shall contain a statement that the owner of the property and the owner of the vehicle have a right to request and appear in person at a hearing or may, in lieu of appearing, submit a sworn written statement denying responsibility for the presence of the vehicle on the land, with his reasons for such denial. If such a statement is submitted, it shall be construed as a request for hearing on the issue of assessment of costs which does not require the presence of the property owner submitting such request, although the submission of such a statement shall not preclude the owner from presenting testimony at the hearing if he or she should decide to do so. If, based on the inspection by the designated employee or his designated representative, there is evidence that a known third party who is not the property owner or the vehicle owner left the vehicle on the property without the consent of the vehicle owner or the property owner, the notice referenced above in this section shall be sent to said third party in the manner specified in this section, at the best known address available to the designated employee. The request shall be made to the designated employee within ten days after the mailing of the notice of intention to abate and remove the vehicle. If such a request is not received within such period, the designated employee shall have authority to remove or cause the removal of the vehicle. (Ord. 346 §2(part), 1994).

8.12.090 Conduct of hearing.

If either the property owner or the vehicle owner requests a hearing within ten days

after the mailing of the notice of intention to abate and remove the vehicle, the person or persons making such request shall be entitled to a hearing before the designated employee, who shall hear all facts and testimony the designated employee deems pertinent. (Ord. 346 §2(part), 1994).

8.12.100 Appeal to City Council.

- A. Any interested party may appeal the decision of the designated employee by filing a written notice of appeal with the designated employee within five days of his decision. Appellant shall pay an appeal fee of seventy-five dollars when filing an appeal with the City Council. No such appeal fee shall be required unless the appeal is from such hearing.
- B. Such appeal shall be heard by the City Council, which may affirm, amend, or reverse, the order or take such other action as it deems appropriate.
- C. The City Council shall give written notice of the time and place of the hearing to the appellant and those persons specified as entitled to notice under Section 8.12.080 of this chapter.
- D. In conducting the hearing, the City Council shall not be limited by the technical rules of evidence. (Ord. 346 §2(part), 1994).

8.12.110 Order of vehicle removal--Assessment of costs.

If no request for a hearing is received by the designated employee within ten days after the notice of intention to abate and remove vehicle is mailed, or both the property owner and the owner of the vehicle have signed releases authorizing removal and waiving further interest in the vehicle, and the designated employee finds, at the conclusion of the hearing, that the vehicle or part thereof is abandoned, wrecked, dismantled, or inoperative within the meaning of this chapter, and in the event of an appeal to the City Council, the City Council upholds the designated employee's findings, the designated employee may order the vehicle removed from the property as a public nuisance and disposed of as hereinafter provided, and determine the administrative costs and the costs of removal to be charged against the owner of the vehicle, the owner of the property on which it is located, and/or the person who placed the vehicle on the property if that fact has been determined at the hearing. The designated employee may impose such conditions and take such other action as he deems appropriate under the circumstances to carry out the purposes of this chapter, including without limitation delaying the time for removal of the vehicle or part thereof if, in his opinion, the circumstances justify it. If the vehicle is ordered removed, the order shall include a description of the vehicle or part thereof and the correct identification number and license number, if available. (Ord. 346 §2(part), 1994).

8.12.120 Exceptions to hearing requirement.

A hearing as provided above in this chapter shall not be required in the following circumstances:

- A. When both the property owner and the owner of the vehicle have signed releases authorizing removal and waiving further interest in the vehicle or part thereof; or
- B. When the vehicle is located upon a parcel zoned for agricultural use, or not improved with a residential structure containing one or more dwelling units; or when the vehicle is inoperable due to the absence of a motor, transmission, or wheels and is incapable of being towed, is valued at less than three hundred dollars by the designated employee or any of his designated representatives, the City, the Amador County Sheriff or any of his deputies, or any California highway patrol officer, is determined by the designated employee or any of his designated representatives to be a public nuisance presenting an immediate threat to public health or safety, and the property owner has signed a release authorizing removal and waiving further interest in the vehicle or part thereof. Prior to final disposition pursuant to Section 8.12.130 of this chapter, of such a low-valued vehicle for which evidence of registration is available, the designated employee shall provide notice to the registered and legal owners of intent to dispose of the vehicle or part, and if the vehicle or part is not claimed and removed within ten days after the notice is mailed, from the disposal site to which the vehicle was taken, final disposition may proceed. (Ord. 346 §2(part), 1994).

8.12.130 Disposition of vehicle or parts.

Vehicles or parts thereof removed pursuant to this chapter may be disposed of by removal to a scrap yard, automobile dismantler's yard, or any suitable site authorized under applicable county ordinances to receive junk and/or dismantled vehicles. After a vehicle or part thereof has been removed, it shall not be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Vehicle Code Section 5004, in which case the vehicle may be reconstructed or made operable. (Ord. 346 §2(part), 1994).

8.12.140 Notice to Department of Motor Vehicles.

Within five days after the date of removal of the vehicle pursuant to this chapter, notice shall be given by the designated employee to the Department of Motor Vehicles, identifying the vehicle or part thereof any evidence of registration available, including, but not limited to, the registration card, certificates of ownership, or license plates. (Ord. 346 §2(part), 1994).

8.12.150 Collection of costs.

Costs incurred in enforcing this Chapter may be collected in accordance with Chapter 1.10 of this Code. If the administrative costs and costs of removal are not paid within thirty days after the date of the order, or the final disposition of an appeal therefrom, the City shall have the right, in addition to any other remedies provided by law for the collection of such costs, to recover such administrative costs and costs of removal from the property, the registered owner and/or legal owner of any vehicle removed from property pursuant to this chapter, and/or from the third party, if any, responsible for placing such vehicle on the property from which it was removed in an action in a court of competent jurisdiction over the amount of such costs. (Ord. 346 §2(part), 1994).

8.12.160 Refusal to remove vehicle—Misdemeanor.

It is unlawful and a misdemeanor for any person to fail or refuse to remove an abandoned, wrecked, dismantled or inoperative vehicle or part thereof or refuse to abate such nuisance when ordered to do so in accordance with the abatement provisions of this chapter or state law where state law is applicable. This offense is punishable by a fine of not more than five hundred dollars or imprisonment not to exceed six months, or by both such fine or imprisonment. (Ord. 346 §2(part), 1994).

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 Lone. 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