



CITY OF IONE CITY COUNCIL STAFF REPORT



FOR THE MEETING OF: APRIL 7, 2009

DATE: APRIL 1, 2009

TO: MAYOR ARD AND CITY COUNCIL

FROM: KIMBERLY A. KERR, CITY MANAGER

SUBJECT: PUBLIC HEARING ON ORDINANCE NO. 426 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IONE AMENDING IONE MUNICIPAL CODE, TITLE 8 – “HEALTH AND SAFETY”, BY AMENDING CHAPTER 8.16 “WEED AND RUBBISH ABATEMENT”

RECOMMENDED ACTION:

That the City Council:

1. Receive staff report;
2. Waive first reading, by substitution of title only, of Ordinance No. 426, An Ordinance of the City Council of the City of Ione Amending Ione Municipal Code, Title 8 – “Health and Safety”, by Amending Chapter 8.16 – “Weed and Rubbish Abatement”;
3. Open Public Hearing;
4. Close Public Hearing; and
5. Schedule second reading of Ordinance No. 426 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 Weed Abatement. Ordinance #426 is needed to update Chapter 8.16 for consistency with the new Code Enforcement Administrative Procedures.

The Fire Department currently implements the Weed Abatement section of the Municipal Code and will continue to handle this section. The current Chapter 8.16 is provided for your review indicating the changes to this section that is necessary for the consistency with the Chapter 1.10, Administrative Enforcement Provisions.

Based on the above information, staff is recommending that the City Council conduct a Public Hearing on Ordinance No. 426 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. Implementation of the Administrative Procedures will result in an expense to the party violating the Municipal Code and will be recoverable through the process.

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 –An Ordinance of the City Council of the City of Ione Amending Ione Municipal Code, Title 8 – “Health and Safety”, by Amending Chapter 8.16 – “Weed and Rubbish Abatement”;

ORDINANCE NO. 426
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IONE
AMENDING IONE MUNICIPAL CODE, TITLE 8 – “HEALTH AND SAFETY”, BY
AMENDING CHAPTER 8.16 “WEED AND RUBBISH ABATEMENT”

=====

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

SECTION 1. TITLE 8, CHAPTER 8.16 “WEED AND RUBBISH ABATEMENT”
is hereby amended as follows:

Chapter 8.16

WEED ABATEMENT

Sections:

- 8.16.010 Weed and grass abatement.
- 8.16.020 Violation—Penalty.
- 8.16.030 Enforcement of this chapter.

8.16.010 Weed and grass abatement.

- A. All weeds, as defined in section 39561.5 of the California Government Code, dry grasses, dead shrubs, dead trees, rubbish, or any material growing upon the streets, sidewalks, or upon private property within the city, which bear seeds of a wingy or downy nature or which by reason of their size, manner of growth and location constitute a fire hazard to any building, improvements, crops or other property, and weeds and grasses which, when dry, will in reasonable probability constitute such a fire hazard, are declared to be a public nuisance.
- B. Cultivated and useful grasses and pastures shall not be considered a public nuisance. However, if the fire chief or his authorized representative shall determine it necessary to protect adjacent improved property from fire exposure, an adequate firebreak may be required.
- C. Any lot of less than two acres shall be cleaned of all debris prior to June 1st or the start of fire season, whichever occurs first.

Lots on which weeds, dry grass, or other non-cultivated or non-useful grasses and pastures exist, shall be mowed, and shall be cut to a maximum height of two inches so as to not constitute a fire hazard throughout the calendar year. Dry grass and/or weeds so mowed shall be removed from the premises and not allowed to remain on the lot.

- D. Any lot of two acres or more shall either be cleaned of all debris or have a minimum twenty-foot wide firebreak around the perimeter in place prior to June 1st or the start of fire season, whichever occurs first.

Firebreaks shall be disced around the entire perimeter of the lot. Scraping will also be allowed, provided that the scraped material is removed or spread evenly over the remaining unscraped property.

- E. Weeds and/or dry grass which are disced, cultivated or rotor-tilled should be performed with equipment that will cut the sod growth loose and bury it under any growth existing at that time.
- F. Dry leaves or wood chips hauled onto lots must be disced or turned under. If leaves or wood chips are being retained for the purpose of mulch or compost, they must be placed in a container so as to not constitute a fire hazard.
- G. Maintenance of parkways are the responsibility of the abutting property owner. (Ord. 351 § 2(part), 1995).

8.16.020 Violation--Penalty.

The owner, occupant, or agent of any lot or premises within the city who violates this chapter or permits a violation of this chapter upon any lot or premises owned, occupied or controlled by him or her, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment. (Ord. 351 § 2 (part), 1995).

8.16.030 Enforcement of this chapter.

Violations of this chapter may be enforced pursuant to Chapter 1.10 (Administrative Enforcement Provisions) of this Code. Alternatively, violations of this chapter may be enforced pursuant to the procedures set forth in sections 39580 to 39585, inclusive, of the California Government Code. The City may collect costs of enforcing this Chapter pursuant to the procedures set forth in Chapter 1.10 (Administrative Enforcement Provisions) or as otherwise provided by state law.

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

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 8.16 “WEED AND RUBBISH ABATEMENT”

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

SECTION 1. TITLE 8, CHAPTER 8.16 “WEED AND RUBBISH ABATEMENT”
is hereby amended as follows:

Chapter 8.16

WEED ~~AND RUBBISH~~ ABATEMENT

Sections:

8.16.010 ~~Public nuisance declared—Exemptions~~Weed and grass
abatement.

~~8.16.020—Waste matter as nuisance.~~

~~8.16.030—Waste matter defined.~~

~~8.16.040—Notice to abate nuisance.~~

~~8.16.050—Service of notice.~~

~~8.16.060—Appeal.~~

~~8.16.070—Removal of nuisance.~~

~~8.16.080—Failure to remove—City abatement.~~

~~8.16.090—Notice of hearing.~~

~~8.16.100—Hearing—Council consideration.~~

~~8.16.110—Filing of resolution.~~

~~8.16.120—Payment.~~

~~8.16.130—Assessment collection and recordation.~~

~~8.16.140~~020 Violation—Penalty.

~~8.16.030~~ Enforcement of this chapter.

8.16.010 ~~Public nuisance declared—Exemptions~~Weed and grass abatement.

- A. All weeds, as defined in section 39561.5 of the California Government Code, dry grasses, dead shrubs, dead trees, rubbish, or any material growing upon the streets, sidewalks, or upon private property within the city, which bear seeds of a wingy or downy nature or which by reason of their size, manner of growth and location constitute a fire hazard to any building, improvements, crops or other property, and weeds and grasses which, when dry, will in reasonable probability constitute such a fire hazard, are declared to be a public nuisance.

- B. Cultivated and useful grasses and pastures shall not be ~~declared~~considered a public nuisance. However, if the fire chief or his authorized representative shall determine it necessary to protect adjacent improved property from fire exposure, an adequate firebreak may be required.
- C. Any lot of less than two acres shall be cleaned of all debris prior to June 1st or the start of fire season, whichever occurs first.

Lots on which weeds, dry grass, ~~etc. are or other non-cultivated or non-useful grasses and pastures exist, shall be~~ mowed, and shall be cut to a maximum height of two inches so as to not constitute a fire hazard throughout the calendar year. Dry grass and/or weeds so mowed shall be removed from the premises and not allowed to remain on the lot.

- D. Any lot of two acres or more shall either be cleaned of all debris or have a minimum twenty-foot wide firebreak around the perimeter in place prior to June 1st or the start of fire season, whichever occurs first.

Firebreaks shall be disced around the entire perimeter of the lot. Scraping will also be allowed, provided that the scraped material is removed or spread evenly over the remaining unscraped property.

- E. Weeds and/or dry grass which are disced, cultivated or rotor-tilled should be performed with equipment that will cut the sod growth loose and bury it under any growth existing at that time.
- F. Dry leaves or wood chips hauled onto lots must be disced or turned under. If leaves or wood chips are being retained for the purpose of mulch or compost, they must be placed in a container so as to not constitute a fire hazard.
- G. Maintenance of parkways are the responsibility of the abutting property owner. (Ord. 351 § 2(part), 1995).

~~8.16.020 Waste matter as nuisance.~~

~~Waste matter as hereinafter defined, which by reason of its location and character is unsightly and interferes with the reasonable enjoyment of property by neighbors, or which would materially hamper or interfere with the prevention or suppression of fire upon the premises, or the abatement of a nuisance as defined by Section 8.16.010 of this chapter, is declared a public nuisance. (Ord. 351 § 2(part), 1995).~~

~~8.16.030 Waste matter defined.~~

~~Waste matter is defined for the purpose of this chapter as unused or discarded matter having no substantial market value, which is exposed to the elements and is not enclosed in any structure or otherwise concealed from public view, and which consists (without limitation or exclusion by enumeration) of such matter and material as:~~

- ~~A. Rubble, asphalt, concrete, plaster, tile;~~
- ~~B. Rubbish, crates, cartons, metal and glass containers;~~
- ~~C. Vehicle bodies and parts.~~

~~(Ord. 351 § 2(part), 1995).~~

~~8.16.040 Notice to abate nuisance.~~

- ~~A. If it is determined that a public nuisance, as defined in this chapter, exists on any lot or premises, or upon any sidewalk, parking or street adjacent to such lot or premises, the city manager, or his or her duly delegated representative, shall cause a notice to be issued to abate such nuisance. Such notice shall be headed: "NOTICE TO CLEAN PREMISES" in letters not less than one inch in height and which shall, in legible characters, direct the abatement of the nuisance and refer to this chapter for particulars. The notice shall also state that the owner, agent, lessee or person having control of the property may within ten days of the date of the notice request a public hearing regarding the intended abatement.~~
- ~~B. Notices served by means other than posting as provided by this chapter shall contain a description of the property in general terms reasonably sufficient to identify the location of the nuisance. (Res. 1582 § 2(part), 2007; Ord. 351 § 2(part), 1995).~~

~~8.16.050 Service of notice.~~

~~The notice required by Section 8.16.040 of this chapter may be served in any of the following manners:~~

- ~~A. By personal service on the owner, occupant or person in charge or control of the property;~~
- ~~B. By regular mail addressed to the owner or person in charge and control of the property, at the address shown on the last available assessment roll, or as otherwise known;~~
- ~~C. By posting at a conspicuous place on the land or abutting public right-of-way and insertion of an advertisement at least once a week for a period of two weeks in a newspaper of general circulation in the city. Such newspaper advertisement shall be a general notice that property in the city has been posted in accordance with this chapter and contain a general statement of the effect of such postings. The date of such newspaper advertisement shall not be considered in computing the appeal periods provided by this chapter. (Ord. 351 § 2(part), 1995).~~

8.16.060 Appeal.

~~Within ten days from the date of posting, mailing, or personal service of the required notice, the owner or person occupying or controlling such lot or premises affected may appeal to the city council. Such appeal shall be in writing and shall be filed with the city clerk. At the regular meeting or regular adjourned meeting of the city council, not less than five days nor more than twenty days thereafter, it shall proceed to hear and pass upon such appeal, and the decisions of the city council thereupon shall be final and conclusive. (Ord. 351 § 2(part), 1995).~~

8.16.070 Removal of nuisance.

~~It shall be the duty of the owner, the agent of the owner, or the person in possession of any lot or premises in the city within ten days from the date of notification as provided herein, or in case of an appeal to the city council, within ten days from the determination thereof, unless the same is sustained, to remove the nuisance as stated. (Ord. 351 § 2(part), 1995).~~

8.16.080 Failure to remove--City abatement.

~~If the owner fails or neglects to remove the nuisance as defined in this chapter, the city manager, or his or her duly delegated representative, shall cause such nuisance to be abated. The abatement work may be done by city crews or by private contractor as determined by the city manager. A report of the proceedings and an accurate account of the cost of abating the nuisance on each separate property shall be filed with the city council. Notice of the public hearing shall be mailed to owners along with a bill for abatement work accomplished, which bill shall also include the city's administrative costs. (Res. 1582 § 2(part), 2007; Ord. 351 § 2(part), 1995).~~

8.16.090 Notice of hearing.

~~The city clerk shall thereupon set the report and account for hearing by the city council at the first regular or adjourned meeting which will be held at least seven calendar days after the date of filing, and shall post a copy of the report and account and notice of the time and place of hearing in a conspicuous place at or near the entrance of City Hall. (Ord. 351 § 2(part), 1995).~~

8.16.100 Hearing--Council consideration.

~~The city council shall consider the report and account at the time set for hearing, together with any objections or protests by any interested parties. Any owner of land or person interested therein may present a written or oral protest or objection to the report and account. At the conclusion of the hearing, the city council shall either approve the report and account as submitted, or as modified or corrected by the city council. The amounts so approved shall be liens upon the respective parcels of land as they are shown upon the last available assessment roll. (Ord. 351 § 2 (part) , 1995).~~

8.16.110 Filing of resolution.

~~The city clerk shall prepare and file with the county auditor a certified copy of the resolution of the city council. (Ord. 351 § 2(part), 1995).~~

8.16.120 Payment.

~~The city treasurer may accept payment of any amount due at any time prior to the city council hearing, as called for in Section 8.16.090 of this chapter. Persons whose bills have been adjusted as a result of a public hearing have thirty days in which to either pay the bill or the amount due will become a lien on their taxes. (Ord. 351 § 2(part), 1995).~~

8.16.130 Assessment collection and recordation.

- ~~A. The provisions of Sections 39580 to 39585, inclusive, of the Government Code are incorporated by reference and made a part of this chapter. The county auditor shall enter each assessment in the county tax roll opposite the parcel of land. The amount of assessment shall be collected at the time and in the manner of ordinary municipal taxes; and if delinquent the amount is subject to the same penalties and procedure for foreclosure and sale as is provided for ordinary municipal taxes.~~
- ~~B. The costs of abatement shall also be a personal indebtedness of the owner of the property upon which the abatement work has been performed and may be collected directly by the city by the institution of a legal proceeding in any court of competent jurisdiction. In addition to the abatement costs including the city's administrative costs, the owner shall be liable for a penalty of ten percent of such costs, plus interest on the amount recovered at the legal rate of ten percent. If there is more than one owner, their liability shall be joint and several.~~

~~The procedure authorized by this paragraph shall be an alternate to the assessment of abatement costs as lien as set forth above. (Ord. 351 § 2(part), 1995).~~

8.16.14020 Violation--Penalty.

The owner, occupant, or agent of any lot or premises within the city who ~~shall permit or allow the existence of a public nuisance as defined in this chapter, violates this chapter or permits a violation of this chapter~~ upon any lot or premises owned, occupied or controlled by him or her, ~~or who shall violate any of the provisions of this chapter,~~ shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment ~~in the county jail~~ not exceeding six months, or by both such fine and imprisonment. (Ord. 351 § 2 (part), 1995).

8.16.030 Enforcement of this chapter.

Violations of this chapter may be enforced pursuant to Chapter 1.10 (Administrative Enforcement Provisions) of this Code. Alternatively, violations of this chapter may be enforced pursuant to the procedures set forth in sections 39580 to 39585, inclusive, of the California Government Code. The City may collect costs of enforcing this Chapter pursuant to the procedures set forth in Chapter 1.10 (Administrative Enforcement Provisions) or as otherwise provided by state law.

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.

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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