

ORDINANCE NO. 1006

AN ORDINANCE PROVIDING FOR THE ABATEMENT AND REMOVAL OF ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES, OR PARTS THEREOF, FROM PUBLIC OR PRIVATE PROPERTY, NOT INCLUDING HIGHWAYS, AS PUBLIC NUISANCES, AND RECOVERY OF COSTS OF ADMINISTRATION AND REMOVAL AS AUTHORIZED BY SECTION 22660 OF THE CALIFORNIA VEHICLE CODE

The City Council of the City of Los Banos does ordain as follows:

Section 1. The City Council of the City of Los Banos does hereby repeal section 4-6.22 of the Los Banos Municipal Code.

Section 2. The City Council of the City of Los Banos does hereby add the following chapter and sections to Title 5 of the Los Banos Municipal Code.

CHAPTER 1

ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES

Sec. 5-1.01 Findings and Declarations.

In addition to and in accordance with the determination made and the authority granted by the State of California under Section 22660 of the California 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, not including highways, 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 a hazard to the health and safety of minors, 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 parts thereof, on private or public property, not including highways, except as expressly permitted by this chapter, is declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this chapter.

Sec. 5-1.02 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

(a) "Abandoned vehicle" shall mean any vehicle that is left on public or private property, not including highways, in such inoperable or neglected condition that it may be reasonably concluded that the owner intends to relinquish all rights or interest in it.

(b) "City Clerk" shall mean the City Clerk for the City of Los Banos or his or her designee who shall be a regularly salaried full-time employee of the City of Los Banos.

(c) "Dismantled vehicle" shall mean any vehicle that is partially or wholly disassembled.

(d) "Enforcement Officer" shall mean the Fire Chief for the City of Los Banos or his or her designee who shall be a regularly salaried full-time employee of the City of Los Banos.

(e) "Highway" shall mean a way or place of whatever nature, publicly maintained and open to the use of the public for the purposes of vehicular travel. "Highway" shall include street.

(f) "Inoperative vehicle" shall mean any vehicle mechanically incapable of being driven under its own power or which is prohibited from being operated on a public street or highway pursuant to California Vehicle Code Sections 4000, 5202, 24002, or 40001, concerning license plates, registration, equipment, safety and related matters.

(g) "Owner of the land" shall mean the owner of the land on which the vehicle, or parts thereof, is located as shown on the last equalized assessment roll.

(h) "Owner of the vehicle" shall mean the last registered owner and the legal owner of record.

(i) "Public property" shall mean property other than a highway owned by a public entity and shall include a public easement or other public right-of-way.

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

(k) "Wrecked Vehicle" shall mean a vehicle that has sustained physical damage to such an extent that it cannot be operated safely on a public street or highway

Sec. 5-1.03 Exceptions to Chapter Applicability.

This chapter shall not apply to:

(a) A vehicle, or part thereof, that 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) A 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, licensed vehicle dealer, a junkyard, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise;

(c) A vehicle, or part thereof, located behind a solid fence six (6) feet in height and not visible from the street or other public or private property; or

(d) A vehicle, or part thereof, which is placed totally within a carport and completely covered by a tarpaulin or similar covering.

Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under provisions of law other than Chapter 10, commencing with Section 22650, of Division 11 of the California Vehicle Code and this chapter.

Sec. 5-1.04 Chapter provisions not exclusive.

This chapter is not the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles, or parts thereof, within the City of Los Banos. This chapter shall supplement and be in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the City of Los Banos, the State of California, or any other legal entity or agency having jurisdiction.

Sec. 5-1.05 Administration and Enforcement – Right of Entry.

Except as otherwise provided herein, or by law, the provisions of this chapter shall be administered and enforced by the Enforcement Officer. In the enforcement of this chapter, the Enforcement Officer, and his or her designated employees, may enter upon private property for the purposes set forth in this chapter to examine a vehicle, or parts thereof, 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 as authorized by California Vehicle Code Sections 22663 and 22669.

Sec. 5-1.06 Right of Entry – Franchisee Personnel.

When the City of Los Banos has contracted with or granted a franchise to any person or persons, for removal of abandoned, wrecked, dismantled or inoperable vehicles,

or parts thereof, such person or persons shall be authorized to enter upon private property to remove or cause the removal of a vehicle, or parts thereof, declared to be a nuisance pursuant to this chapter.

Sec. 5-1.07 Assessment of Administrative Costs.

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 parts thereof) under this chapter.

Sec. 5-1.08 Authority – Abatement and Removal.

Upon discovering the existence of an abandoned, wrecked, dismantled, or inoperative vehicle, or parts thereof, on private property or public property within the City of Los Banos, the Enforcement Officer shall have the authority to cause the abatement and removal thereof in accordance with the procedures set forth in this chapter.

Sec. 5-1.09 Notice of Intention to Abate.

(a) Except as provided by subsections (c) and (d) of this section or otherwise provided by law, a ten (10) day notice of intention to abate and remove a vehicle, or parts thereof, as a public nuisance shall be mailed 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 record of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership.

(b) The notices of intention to abate and remove a vehicle, or parts thereof, shall be in substantially the following forms:

1. Notice to the Owner of Land:

NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLE, OR PARTS THEREOF, AS A PUBLIC NUISANCE

(Name and address of owner of the land)

As owner shown on the last equalized assessment roll of the land located at (*address*), you are hereby notified that the undersigned, pursuant to Title 5, Chapter 1, of the Los Banos Municipal Code, has determined that there exists upon said land an abandoned, wrecked, dismantled or inoperative vehicle, or parts thereof, registered to (*name*), license number (*number*), which constitutes a public nuisance.

You are hereby notified to abate said nuisance by the removal of said vehicle, or parts thereof, within ten (10) days from the date of mailing of this notice, and upon your failure to do so, the same will be abated and removed by the City of Los Banos and the removal costs together with administrative costs, will be assessed to you as owner of the land on which said vehicle, or parts thereof, is located.

As owner of the land on which said vehicle, or parts thereof, is located, you are hereby notified that you may, within ten (10) days after the mailing of this notice of intention, request a public hearing and if such a request is not received by the City Clerk at City Hall, 520 J Street, Los Banos, California, 93635, within such ten (10) day period, the Enforcement Officer shall have the authority to abate and remove said vehicle, or parts thereof, as a public nuisance and assess the costs as aforesaid without a public hearing. You may submit a sworn written statement within such ten (10) day period denying responsibility for the presence of said vehicle, or parts thereof, on said land, with your reasons for denial, and such statement shall be constituted as a request for hearing at which your presence is not required. You may appear in person at any hearing requested by you or the owner of the vehicle or, in lieu thereof, may present a sworn written statement as aforesaid in time for consideration at such hearing.

Notice mailed: (*date*)

CITY OF LOS BANOS By (*name*), Code Enforcement Officer

2. Notice to the Owner of the Vehicle:

NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLE, OR PARTS THEREOF, AS A PUBLIC NUISANCE

(Name and address of last registered and/or legal owner of record of vehicle-notice should be given to both if different)

As last registered and/or legal owner of record of (*description of vehicle - make, model, license*), you are hereby notified that the undersigned, pursuant to Title 5, Chapter 1, of the Los Banos Municipal Code has determined that said vehicle, or parts thereof, exists as an abandoned, wrecked, dismantled or inoperative vehicle at (*describe location on public or private property*) and constitutes a public nuisance pursuant to the provisions of Title 5 Chapter 1, of the Los Banos Municipal Code.

You are hereby notified to abate said nuisance by the removal of said vehicle, or parts thereof, within ten (10) days from the date of mailing of this notice.

As registered and/or legal owner of record of said vehicle, or parts thereof, you are hereby notified that you may, within ten (10) days after the mailing of this notice of intention, request a public hearing and if such a request is not received by the City Clerk at City Hall, 520 J Street, Los Banos, California, 93635, within such ten (10) day period, the Enforcement Officer shall have the authority to abate and remove said vehicle, or parts thereof, as a public nuisance and assess the costs as aforesaid without a public hearing.

Notice mailed: (*date*)

CITY OF LOS BANOS By (*name*), Code Enforcement Officer

(c) No notice of intention to abate and remove a vehicle, or parts thereof, shall be required if the property owner and the owner of the vehicle or part thereof have signed releases authorizing removal and waiving further interest in the vehicle or parts thereof.

(d) No notice of intention to abate and remove a vehicle, or parts thereof, shall be required if (1) the vehicle is inoperable due to the absence of a motor, transmission, or wheels and incapable of being towed, (2) is valued at less than two hundred dollars (\$200) by a person specified in California Vehicle Code Section 22855, (3) it is determined by the Enforcement Officer to be a public nuisance presenting an immediate threat to public health or safety; and (4) the property owner has signed a release authorizing removal and waiving further interest in the vehicle or part thereof. The Enforcement Officer shall not dispose of any such vehicle under California Vehicle Code Section 22662 unless he shall have provided notice to the registered and legal owners of intent to dispose of the vehicle or part, and the vehicle or part is not claimed and removed within twelve (12) days after the notice is mailed. This subsection applies only to inoperable vehicles located upon a parcel that is (1) zoned for agricultural use; or (2) is not improved with a residential structure containing one or more dwelling units.

Sec. 5-1.10 Request for Public Hearing.

(a) Upon request by the owner of the land or the owner of the vehicle, received by the Enforcement Officer within ten (10) days after the mailing of the notices of intention to abate and remove, a public hearing shall be held by the City Clerk or his or her designee on the question of abatement and removal of the vehicle, or parts thereof, as an abandoned, wrecked, dismantled or inoperative vehicle and the assessment of administrative costs and costs of removal of the vehicle, or parts thereof, against the property on which it is located.

(b) If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on the owner's land within such ten (10) day period, the statement shall be construed as a request for a hearing, which does not require the owner's presence.

(c) Notice of the hearing shall be mailed, by certified mail, return receipt requested, at least ten (10) days before the hearing to the owner of the land and to the owner of the

vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership.

(d) If a request for hearing is not received within the ten (10) days after mailing of the notice of intention to abate and remove, the Enforcement Officer shall have the authority to abate and remove the vehicle, or parts thereof, as a public nuisance without holding a public hearing.

Sec. 5-1.11 Public Hearing.

(a) All hearings under this chapter shall be held before the City Clerk (hereinafter referred to as the Hearing Officer) who shall hear all facts and testimony he or she deems pertinent. The Hearing Officer shall not be limited by the technical rules of evidence. Such facts and testimony may include testimony on the condition of the vehicle, or parts thereof, and the circumstances concerning its location on such private property or public property. The owner of the land may appear in person at the hearing or present a sworn written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his or her reasons for such denial.

(b) The Hearing Officer may impose such conditions and take such other action as he or she deems appropriate under the circumstances to carry out the purpose of this chapter. The Hearing Officer may delay the time for removal of the vehicle or parts thereof if, in the Hearing Officer's opinion, the circumstances justify it. At the conclusion of the public hearing, the Hearing Officer may find that a vehicle, or parts thereof, has been abandoned, wrecked, dismantled or is inoperative on private or public property and order the same removed from the property as a public nuisance and disposed of as provided in this chapter and determine the administrative costs and cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle or parts thereof and the correct identification number and license number of the vehicle, if available at the site.

(c) If the Hearing Officer finds that the vehicle was placed on the land without the consent of the owner of the land and that the owner of the land has not subsequently acquiesced in its presence, the costs of administration or removal of the vehicle shall not be assessed against the property upon which the vehicle is located or otherwise attempt to collect such costs from such owner of the land.

(d) If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his or her land but does not appear, or if an interested party makes a written presentation to the Hearing Officer but does not appear, he or she shall be notified in writing of the decision.

Sec. 5-1.12 Appeal-Hearing.

(a) Any interested party may appeal the decision of the Hearing Officer to the Traffic Safety Committee by filing a written notice of appeal with the Hearing Officer within five (5) days after the Hearing Officer's decision.

(b) Such appeal shall be heard by the Traffic Safety Committee, which may affirm, amend or reverse the order, or take other action deemed appropriate.

(c) The City Clerk shall give written notice of the time and place of the hearing to the appellant and those persons specified in Section 5-1.09. In conducting the hearing, the Traffic Safety Committee shall not be limited by the technical rules of evidence. The Traffic Safety Committee shall review the matter de novo.

Sec. 5-1.13 Removal and Disposal-Reconstruction Prohibited.

Five (5) days after adoption of the order declaring the vehicle or parts thereof to be a public nuisance, or five (5) days from the date of mailing of notice of the decision if such notice is required by Section 5-1.11(d) or fifteen (15) days after such action of the council authorizing removal following appeal, the vehicle or parts thereof may be disposed of by removal to a scrap yard or automobile dismantler's yard. After a vehicle has been removed it shall not thereafter be reconstructed or made operable, unless it is a vehicle that qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to

Vehicle Code Section 5004, and as subsequently amended, in which case the vehicle may be reconstructed or made operable.

Sec. 5-1.14 Notice to Department of Motor Vehicles.

Within five (5) days after the date of removal of the vehicle or parts thereof, notice shall be given to the Department of Motor Vehicles identifying the vehicle or parts thereof removed. At the same time there shall be transmitted to the Department of Motor Vehicles any evidence of registration available, including registration certificates, certificates of title and license plates.

Sec. 5-1.15 Assessment of Costs Against Land.

If the administrative costs and the cost of removal which are charged against the owner of a parcel of land pursuant to this chapter are not paid within thirty (30) days of the date of the order, or the final disposition of an appeal there from, such costs shall be assessed against the parcel of land pursuant to Section 38773.5 of the Government Code and shall be transmitted to the tax collector for collection. Such assessment shall have the same priority as other city taxes.

Section 3. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption, and shall be published by one (1) insertion in the Los Banos Enterprise, a newspaper printed and published in the City of Los Banos, within fifteen (15) days after its final passage.

Introduced by Council Member McAdam and seconded by Council Member Hudak on the 19th day of November 2003.

Passed on the 3rd day of December, 2003, by the following vote:

AYES: Council Members Gerbi, Hudak, McAdam, Smith, Mayor Amabile
NOES: None
ABSENT: None

APPROVED: _____

/s/ Michael S. Amabile
Michael S. Amabile, Mayor

ATTEST:

/s/ Lucille L. Mallonee
Lucille L. Mallonee, City Clerk