

Date: October 22, 2014
To: Bryan H. Montgomery, City Manager
From: Troy Edgell, Code Enforcement Coordinator
Subject: An Ordinance Amending Title 4, Chapter 29 of the Oakley Municipal Code (OMC) dealing with Neighborhood Standards

Approved and Forwarded to City Council:



Summary and Recommendation

Staff recommends the City Council waive the first reading and introduce the Ordinance amending Title 4, Chapter 29 that removes the term "Unregistered" from the Prohibited Activities paragraph in Chapter 29, Neighborhood Preservation. This change will align the OMC with the policies and procedures of the California Vehicle Code applicable to towing unregistered vehicles.

Fiscal Impact

It is anticipated the fiscal impact will be neutral.

Background and Analysis

Current OMC Title 4 Chapter 29, Neighborhood Preservation, deals with numerous prohibited activities. Paragraph (c) of Section 4.29.408 declares the following a prohibited activity and therefore a nuisance:

"The parking of any unregistered, disabled, or inoperable vehicle, boat, camper, or trailer within the front yard or side yard setback for a period of more than seventy-two (72) consecutive hours."

After several months of enforcement, it has become apparent the true intent of Section 4.29.408 was the prevention of disabled vehicles, boats, and trailers from becoming an eyesore and/or residences becoming salvage yards. Experience indicates that an Unregistered Vehicle does not fall into this category.

Additionally, notifying the owner of an unregistered vehicle parked on their private property they must remove the vehicle from public view or get it registered is somewhat contradictory to California Vehicle Code 22651, which specifically provides a peace officer towing authority. However, the peace officer is only allowed to tow the vehicle if the registration expiration date is in excess of six months.

Therefore it is requested the OMC be amended to ensure standardization between the City of Oakley's Code applicable to Unregistered Vehicles and the State of California's Vehicle Code applicable to Unregistered Vehicles.



Conclusion

Staff recommends the City Council waive the first reading and introduce the Ordinance amending Title 4, Chapter 29 of the Oakley Municipal Code.

Attachments

- 1) Proposed Ordinance for Adoption
- 2) Red-Line Version of Existing Title 4, Chapter 29
- 3) California Vehicle Code Division 11 Chapter 10 Article 1 Table of Contents
- 4) California Vehicle Code Section 22651 "Circumstances Permitting Removal"

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY AMENDING
SECTION 4.29.408(c) OF THE OAKLEY MUNICIPAL CODE, DEALING WITH
NEIGHBORHOOD STANDARDS**

The City Council of the City of Oakley does ordain as follows:

Section 1. Paragraph (c) of Section 4.29.408 of the Oakley Municipal Code is hereby amended to read as follows:

(c) The parking of any disabled vehicle, boat, camper or trailer, or any that appear inoperable, within the front yard or side yard setback from a period of more than seventy-two (72) hours. Any of the following characteristics shall apply to this paragraph: flat tire or tires; litter or vegetation under the vehicle; significant body damage; lack of a motor, doors or other body parts; broken window or windows.

Section 2. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 3. California Environmental Quality Act (CEQA) finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that this ordinance will not have a significant effect on the environment; therefore it is not subject to CEQA.

Section 4. Effective Date.

The ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

4.29.408 Prohibited Activities.

It is hereby declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any property to engage in or allow others to engage in any one or more of the following activities on such property:

a. Wrecking, dismantling, disassembling, manufacturing, fabricating, building, remodeling, assembling, repairing, painting or servicing, in the front yard setback, any motor vehicle, boat, trailer, machinery, equipment, appliance or appliances, furniture or other personal property. Nothing in this section shall prohibit the routine maintenance of personal property that is owned, leased or rented by the owner, lessee, or occupant of the property so long as (1) any routine maintenance performed shall be completed within a seventy-two (72) consecutive hour period, (2) the activity does not result in a violation of Section [4.1.102](#), et seq., of this Code (3) the property is cleaned of all debris, oil, grease, gasoline, cloths, rags, equipment or other materials used in the work and (4) the property is left in a condition so as not to create a hazard to persons or property. For purposes of this section, routine maintenance means and includes changing oil and tires, replacement of water pump, alternator, brakes, shocks, oil and air filters, and spark plugs, and similar work but not major auto repairs.

b. The parking of any motor vehicle, trailer, camper or boats on any unimproved surface, unless it is located behind the front yard or side yard setback.

c. The parking of any disabled vehicle, boat, camper or trailer, or any that appear inoperable, within the front yard or side yard setback from unregistered, disabled or inoperable vehicle, boat, camper, or trailer within the front yard or side yard setback for a period of more than seventy-two (72) consecutive hours. Any of the following characteristics shall apply to this paragraph: flat tire or tires; litter or vegetation under the vehicle; significant body damage; lack of a motor, doors or other body parts; broken window or windows.

d. Welding or burning operations at any time in any front or street side yard setback.

e. The use of any motor vehicle for living or sleeping quarters in any place in the City, except in a location lawfully operated as a mobile home park or travel trailer park, subject to the following:

i. Nothing contained in this section shall be deemed to prohibit bona fide guests of a City resident from occupying a recreational vehicle upon residential premises with the consent of the resident for a period not to exceed seven (7) days, as long as it is parked on an improved surface.

ii. Any recreational vehicle so used shall not discharge any waste or sewage into the sewer system except through the residential discharge connection of the residential premises on which the recreational vehicle is parked.



Division 11 Chapter 10
Motor Vehicles

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California Vehicle Code Division 11 Chapter 10 Article 1 Table of Contents

Division 11 - Rules of the Road
Chapter 10. Removal of Parked and Abandoned Vehicles
Article 1. Authority to Remove Vehicles

Table of Contents for Article 1 of Chapter 10 of Division 11 of the California Vehicle Code

Section Number	Section Title
22650	Prohibition of Removal
22651	Circumstances Permitting Removal
22651.05	Authority to Remove Trained Volunteers
22651.07	Towing Fees and Access Notice: Vehicle Owner Rights
22651.1	Towing or Storage Charges Payment
22651.2	Vehicle Removal
22651.3	Offstreet Parking Facility Removal and Impoundment
22651.4	Foreign Commercial Vehicles Impoundment
22651.5	Additional Circumstances Permitting Removal
22651.6	Vehicle Removal Speed Contests
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22651.9	Removal of Vehicles for Sale
22651.10	Sacramento County Pilot Program Intervention and Impoundment
22652	Removal from Disabled Persons Parking Spaces
22652.5	Immunity From Liability
22652.6	Additional Circumstances Permitting Removal
22653	Removal From Private Property
22654	Authorization for Moving a Vehicle
22655	Impounding Vehicle for Investigation
22655.3	Removal for Investigation
22655.5	Impounding for Evidence Lien Charges
22656	Removal from Railroad Right of Way
22658	Removal From Private Property
22658.1	Notification Damage to Fences
22658.2	Removal From Common Interest Development
22659	Removal From State Property
22659.5	Prostitution Forfeiture of Vehicle Used in Commission of Act of Prostitution
22660	Local Abatement Procedure
22661	Contents of Ordinance
22662	Disposition of Vehicles or Parts
22663	Administration of Ordinance
22664	Waiver Reporting Requirements and Fees
22665	Administration of Local Programs by Highway Patrol
22666	Regulations of Highway Patrol
22667	Abatement and Removal Priorities
22668	Abandoned Vehicle Trust Fund Prohibited Disbursements
22669	Removal of Abandoned Vehicles
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22671	Removal by Franchise or Contract
22710	Service Authority for Abatement of Abandoned Vehicles
22711	Abandoned Vehicles Transport to Penal Institutions

Vehicle Code Table of Contents

V C Section 22651 Circumstances Permitting Removal

Circumstances Permitting Removal

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

- (a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.
- (b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.
- (c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is issued charging that the vehicle was embezzled.
- (d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.
- (e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.
- (f) When a vehicle, except highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.
- (g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.
- (h) (1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.
(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.
- (i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violations, or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:
 - (A) Evidence of his or her identity.
 - (B) An address within this state at which he or she can be located.
 - (C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to

have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(l) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) When the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. Except as provided in subdivisions (v) and (w), a vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility under the following circumstances:

(A) With a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility.