

ORDINANCE NO. 2315

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTER 8.34, "VEHICLE
ABATEMENT" TO THE MERCED MUNICIPAL
CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Chapter 8.34, "Vehicle Abatement" of the Merced Municipal Code is hereby amended to read as follows:

**"CHAPTER 8.34
ABANDONED VEHICLE ABATEMENT**

Sections:

- 8.34.010 General Abandoned Vehicles as Nuisances.**
- 8.34.020 Definitions.**
- 8.34.030 Exceptions.**
- 8.34.040 Nonexclusivity of Regulation.**
- 8.34.050 Officer Designated.**
- 8.34.060 Authority of Private Contractor.**
- 8.34.070 Administration Costs.**
- 8.34.080 Authority of Vehicle Abatement Officer.**
- 8.34.090 Abatement Notice of Intention.**
- 8.34.100 Public Hearing-Requested.**
- 8.34.110 Public Hearing-Procedure, Action.**
- 8.34.120 Vehicle Disposal.**
- 8.34.130 Notice to Department of Motor Vehicles.**
- 8.34.140 Cost Recovery.**
- 8.34.150 Act of Abandonment-Infraction.**
- 8.34.160 Refusal to Abate-Infraction.**
- 8.34.170 Constitutionality.**

8.34.010 General Abandoned Vehicles as Nuisances.

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 (VC) 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, including highways, creates 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, 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, except as expressly permitted in this Chapter, constitutes a public nuisance which may be abated as such in accordance with the provisions of this Chapter.

8.34.020 Definitions. As used in this Chapter, the following words and phrases are defined as set out in this Section:

A. '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.

B. 'Owner of the land' means the owner of the land on which the vehicle, or parts thereof, is located, as shown on the last equalized assessment roll.

C. 'Owner of the vehicle' means the last registered owner and legal owner of record.

D. '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.

8.34.030 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 highway or other public or private property;

B. 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, or a junkyard.

C. Nothing in this section authorizes the maintenance of a public or private nuisance as defined under provision of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code and this Chapter.

8.34.040 Nonexclusivity of Regulation. This Chapter is not the exclusive regulation of abandoned, wrecked, dismantled, or inoperative vehicles within the city and/or county. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore or hereafter enacted by this city/county, the state, or any other legal entity or agency having jurisdiction.

8.34.050 Officer Designated. Except as otherwise provided in this Chapter, the provisions of this Chapter shall be administered and enforced by the vehicle abatement officer as designated by the City Manager or designated agency head responsible for abandoned vehicle abatement operations in the designated city and/or county. In the enforcement of this Chapter, such

officers and deputies may enter upon private or public property to examine a vehicle, or parts thereof, obtain information as to the identity of a vehicle, and remove or cause the removal of a vehicle or part thereof declared to be a nuisance pursuant to this Chapter.

8.34.060 Authority of Private Contractor. When the City Council has contracted with or granted a franchise to any person or persons to remove vehicles pursuant to this Chapter, 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.

8.34.070 Administration 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 part thereof) under this Chapter.

8.34.080 Authority of Vehicle Abatement Officer. Upon discovering the existence of an abandoned, wrecked, dismantled or inoperable vehicle, or parts thereof, on private property or public property within the city/county, the vehicle abatement officer shall have the authority to cause the abatement and removal thereof in accordance with the procedure described in this Chapter.

8.34.090 Abatement Notice of Intention.

A. A ten (10) day notice of intention to abate and remove the vehicle, or parts thereof, as a public nuisance shall be mailed by registered or certified mail to the owner of the land as shown on last equalized assessment roll and to the last registered and legal owner of record, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notices of intention shall be in substantially the following forms:

**"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 (section of ordinance or municipal code) has determined that there exists upon said land an (or parts of an) abandoned, wrecked, dismantled, or inoperative vehicle registered to, license or VIN number , which constitutes a public nuisance pursuant to the provision of (ordinance or municipal code Chapter number).”

“You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) 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 and the costs thereof, together with administrative costs, assessed to you as owner of the land on which said vehicle (or said parts of a vehicle) is located.”

“As owner of the land on which said vehicle (or said parts of a vehicle) 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 Council of the City of Merced within such ten (10) day period, the City Manager shall have the authority to abate and remove said vehicle (or said parts of a vehicle) 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 said parts of a vehicle) on said land, with your reasons for denial, and such statement shall be construed as a request

for a 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: _____

City Manager
City of Merced

**"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 the last registered (and/or legal) owner of record of (description of vehicle - make, model, license, etc.), you are hereby notified that the undersigned pursuant to (section of ordinance or municipal code) has determined that said vehicle (or parts of a vehicle) 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 provision of (ordinance or municipal code chapter number).”

“You are hereby notified to abate said nuisance by removing said vehicle (or said parts of a vehicle) within ten (10) days from the date of the mailing of this notice.”

“As the registered (and/or legal) owner of record of said vehicle (or said parts of a vehicle), you are hereby notified that you may, within ten (10) days after the mailing of this notice of intention, request a public hearing or may submit a sworn written statement denying

responsibility for the presence of the vehicle on the land, with his or her reasons for such denial, in lieu of appearing. If such request is not received by the City Council of the City of Merced within such ten (10) day period, the Chief of Police shall have the authority to abate and remove said vehicle (or said parts of a vehicle) without a hearing.”

Notice Mailed _____

City Manager
City of Merced

B. A notice of intention to abate shall not be required if (1) the property owner and the owner of the vehicle have signed releases authorizing removal and waive further interest in the vehicle or part thereof, or (2) all the following conditions are satisfied:

- (1) The vehicle or part thereof is inoperable due to the absence of a motor, transmission, or wheels and is incapable of being towed;
- (2) The vehicle or part thereof is valued at less than three hundred dollars (\$300.00) by the Police Chief of the City of Merced or his/her designee;
- (3) The Department of Building and Safety has determined that the vehicle or part thereof is a public nuisance presenting an immediate threat to public health or safety;
- (4) The property owner has signed a release authorizing the removal and waiving further interest in the vehicle or part thereof; and

- (5) The vehicle is located upon a parcel that is either zoned for agricultural use or is not improved with a residential structure containing one or more dwelling units.

C. If a vehicle is removed pursuant to subdivision (2), prior to final disposition, the registered or legal owner shall be notified of the intent to dispose of the vehicle or parts thereof. If the vehicle or part thereof is not claimed and removed from the scrap-yard, automobile dismantler's yard or public disposal area within twelve (12) days after the notice to dispose of vehicle is mailed, final disposition may proceed.

8.34.100 Public Hearing Requested. Upon request by the owner of the vehicle or owner of the land received by the city's/county's vehicle abatement 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 Enforcement Hearing Officer 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 the administrative costs and cost of removal of the vehicle, or parts thereof, against the property on which it is located.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his/her land within such ten (10) day period, said statement shall be construed as a request for a hearing, which does not require his/her presence. Notice of the hearing shall be mailed, by registered mail, 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. If such a request for hearing is not received within said ten (10) days after mailing of the notice of intention to abate and remove, the city/county shall have the authority to abate and

remove the vehicle, or parts thereof, as a public nuisance without holding a public hearing.

8.34.110 Public Hearing - Procedure Action. All hearings under this Chapter shall be held before the Enforcement Hearing Officer, which shall hear all facts and testimony deemed pertinent. Said facts and testimony may include testimony on the condition of the vehicle, or part thereof, and the circumstances concerning the vehicle's location on the private property or public property. The Enforcement Hearing Officer shall not be limited by the technical rules of evidence. The owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with reasons for such denial.

The Enforcement Hearing Officer may impose such conditions and take such other action as it deems appropriate under the circumstances to carry out the purpose of this Chapter. This may delay the time for removal of the vehicle, or part thereof, if, in the opinion of the hearing officer, the circumstances justify the delay. At the conclusion of the public hearing, the Enforcement Hearing Officer) may find that a vehicle, or part thereof, has been abandoned, wrecked, dismantled or is inoperative on private or public property, and by resolution 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 the cost of removal to be charged against the owner of the parcel of land on which the vehicle, or part thereof, is located. The order requiring removal shall include a description of the vehicle, or part thereof, and the correct identification number and license number of the vehicle, if available at the site.

If it is determined at the hearing that the vehicle was placed on the land without the consent of the land owner and that (s)he has not subsequently acquiesced in its presence, the Enforcement Hearing Officer shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from such land owner.

If an interested party makes a written presentation to the Enforcement Hearing Officer, but does not appear, (s)he shall be notified in writing of the decision.

8.34.120 Vehicle Disposal. 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, as required by Section 8.34.110, whichever date is later, the vehicle or parts thereof may be disposed of by removal to a scrapyard 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 which qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to 5004 VC, in which case the vehicle may be reconstructed or made operable.

8.34.130 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 by the persons authorized to remove the vehicle identifying the vehicle or parts thereof removed. At the same time there shall be transmitted to the Department of Motor Vehicles evidence of registration available, including registration certificates, certificates of title, and license plates.

8.34.140 Cost Recovery. If the administrative costs and the costs of removal which are charged against the owner of a parcel of land pursuant to Section 8.34.110 are not paid within thirty (30) days of the date of the order, such

costs shall be assessed against the parcel of land pursuant to Government Code Section 25845 or 38733.5 and shall be transmitted to the tax collector for collection. Said assessment shall have the same priority as other county taxes.

8.34.150 Act of Abandonment - Infraction. It is unlawful and an infraction for any person to abandon, store, leave, or permit the abandonment, storing, or leaving of any licensed or unlicensed vehicle or parts thereof which is abandoned, wrecked, dismantled or inoperative upon any private property or public property, including highways, within the City for a period in excess of seventy-two (72) or more consecutive hours unless such vehicle or parts thereof is completely enclosed within a building in a lawful manner where it is not plainly visible from the street or other public or private property, or unless such vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer or a junkyard.

8.34.160 Refusal to Abate - Infraction. It is unlawful and an infraction 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 such state law is applicable.

8.34.170 Constitutionality. Should any section, subsection, paragraph, clause, or phrase of this Chapter for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Chapter.”

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the 7th day of July, 2008, and was passed and adopted at a regular meeting of said City Council held on the 21st day of July, 2008, by the following called vote:

AYES: **Council Members:** SANDERS, CORTEZ, CARLISLE,
GABRIALT-ACOSTA, SPRIGGS, WOOTEN

NOES: **Council Members:** LOR

ABSTAIN: **Council Members:** NONE

ABSENT: **Council Members:** NONE

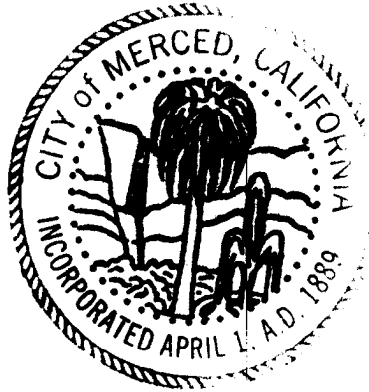
APPROVED:


Mayor

ATTEST:
JAMES G. MARSHALL, CITY CLERK

BY: *Don J. Davidson*
Deputy City Clerk

(SEAL)



APPROVED AS TO FORM:

S. Isaac Localio *6-24-08*
City Attorney **Date**

PROOF OF PUBLICATION

(2015.5 C.C.P)

Proof of Publication of

STATE OF CALIFORNIA)

)ss.

)

COUNTY OF MERCED

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the printer foreman or principal clerk of The Merced County Times, a newspaper of general circulation, printed and published in the City of Merced, County of Merced, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Merced, State of California, under the date of December 14, 1999, Case Number 143600; that the notice, of which the annexed is a printed copy has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

July 24, 2008

Ordinance No. 2315

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Date: July 24, 2008

Proof of Publication - Merced County Times, Box 772, Merced,
Adjudged a newspaper of general circulation by c

This space is for the County Clerk's
Filing Stamp

Copy of notice here

LEGAL# 8838

ORDINANCE NO. 2315

AN ORDINANCE OF THE CITY
COUNCIL OF THE CITY OF MERCED,
CALIFORNIA, AMENDING CHAPTER 8.34,
"VEHICLE ABATEMENT" TO THE
MERCED MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF
MERCED DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO CODE.
Chapter 8.34, "Vehicle Abatement" of the
Merced Municipal Code is hereby amended
to read as follows:

"CHAPTER 8.34
ABANDONED VEHICLE
ABATEMENT

Sections:

- 8.34.010 General Abandoned Vehicles as Nuisances.
- 8.34.020 Definitions.
- 8.34.030 Exceptions.
- 8.34.040 Nonexclusivity of Regulation
- 8.34.050 Officer Designated.
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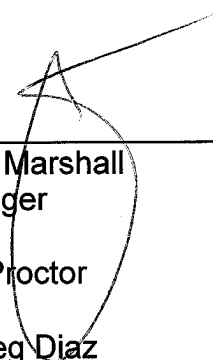
8.34.020 Definitions. As used in this Chapter.

M E M O R A N D U M

DATE: July 22, 2008 **AGENDA ITEM:** M-5
TO: Deneen Proctor, Director of Support Services
FROM: James G. Marshall, City Manager
RE: Ordinance – Dealing with Vehicle Abatement

On Monday, July 21, 2008, the City Council introduced for second reading and adopted Ordinance No. 2315– An Ordinance of the City Council of the City of Merced, California, amending Chapter 8.34, "Vehicle Abatement" to the Merced Municipal Code.

Please ensure that the ordinance is published and the appropriate departments notified for implementation.



James G. Marshall
City Manager

JGM/dw:Proctor

cc: Greg Diaz
Brad Grant
Russ Thomas
Dave Gonzalves