

ORDINANCE NO. 2010-06

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRAWLEY,
CALIFORNIA AMENDING THE CODIFIED ORDINANCES OF THE CITY
OF BRAWLEY RELATING TO ABATEMENT AND REMOVAL OF
ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES.

THE CITY COUNCIL OF THE CITY OF BRAWLEY, CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1: Article VIII of Chapter 17 of the Brawley Municipal Code is hereby repealed and re-enacted as follows:

ARTICLE VIII - ABANDONED VEHICLE ABATEMENT

- 17.99.1 ABANDONED VEHICLES AS NUISANCES
- 17.99.2 DEFINITIONS
- 17.99.3 EXCEPTIONS
- 17.99.4 NONEXCLUSIVITY OF REGULATION
- 17.99.5 OFFICER DESIGNATED
- 17.99.6 ACT OF ABANDONMENT - INFRACTION
- 17.99.7 AUTHORITY OF VEHICLE ABATEMENT OFFICER
- 17.99.8 AUTHORITY OF PRIVATE CONTRACTOR
- 17.99.9 ADMINISTRATION COSTS
- 17.99.10 NOTICE OF INTENTION TO ABATE
- 17.99.11 PUBLIC HEARING REQUESTED
- 17.99.12 PUBLIC HEARING PROCEDURE
- 17.99.13 APPEALS
- 17.99.14 VEHICLE DISPOSAL
- 17.99.15 NOTICE TO DEPARTMENT OF MOTOR VEHICLES
- 17.99.16 COST RECOVERY
- 17.99.17 REFUSAL TO ABATE - INFRACTION
- 17.99.18 SEVERABILITY

17.99.1 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 of Brawley 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 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, not including highways except as expressly permitted in this article, constitutes a public nuisance which may be abated as such in accordance with the provisions of this Article.

17.99.2 DEFINITIONS

As used in this Article, 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.
- e. "Public Property" does not include highways.

17.99.3 EXCEPTIONS

This Article 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 or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.

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 Article.

17.99.4 NONEXCLUSIVITY OF REGULATION

This Article is not the exclusive regulation of abandoned, wrecked, dismantled, or inoperative vehicles within the unincorporated area of the City. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore or hereafter enacted by the City of Brawley, the State, or any other legal entity or agency having jurisdiction.

17.99.5 OFFICER DESIGNATED

Except as otherwise provided herein, the provisions of this Article shall be administered and enforced by the vehicle abatement officer as designated by the City Manager. In the

enforcement of this Article, 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 Article.

17.99.6 ACT OF ABANDONMENT

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 or public property, including highways, within the City for a period in excess of 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.

17.99.7 AUTHORITY OF VEHICLE ABATEMENT OFFICER

Upon discovering the existence of an abandoned, wrecked, dismantled or inoperable vehicle, or parts thereof, a private property or public property within the City, the vehicle abatement officer shall have the authority to cause the abatement and removal thereof in accordance with the procedure described in this Article.

17.99.8 AUTHORITY OF PRIVATE CONTRACTOR

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 Article.

17.99.9 ADMINISTRATION COSTS

The City 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 Article.

17.99.10 NOTICE OF INTENTION TO ABATE

- a. A 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 form:

**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)

Based on a site inspection of your property, the Vehicle Abatement Officer has determined that conditions exist at the property legally known as _____, Assessor's Parcel Numbers _____ which are not in compliance with City of Brawley Land Use Ordinance.

On the subject property there exists an (or parts of an) abandoned, wrecked, dismantled, or inoperative vehicle registered to _____, license number _____, which constitutes a public nuisance pursuant to the provision of (Article VIII of Chapter 17 of the Brawley Municipal Code). The Imperial County Tax Assessor's "Current Roll" identifies the above person(s) as the current owners of the subject property.

You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within 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, will be 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 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 of Brawley within such 10-day period, the City Vehicle Abatement Officer 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 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 in time for consideration at such hearing.

b. A notice of intention to abate shall not be required if (1) the property owner and the owner of the vehicle has signed releases authorizing removal and waives 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 Vehicle Abatement Office;
- 3) City of Brawley 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.

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 12 days after the notice to dispose of vehicle is mailed, final disposition may proceed.

17.99.11 PUBLIC HEARING - REQUESTED

Upon request by the owner of the vehicle or owner of the land received by the City's vehicle abatement officer within 10 days after the mailing of the notices of intention to abate and remove, a public hearing shall be held by the Planning Director or his designated subordinate as 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 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 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 10 days after mailing of the notice of intention to abate and remove, the City shall have the authority to abate and remove the vehicle, or parts thereof, as a public nuisance without holding a public hearing.

17.99.12 PUBLIC HEARING PROCEDURE, ACTION

All hearings under this Article shall be held before the Planning Director or his designated subordinate as 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 Planning Director or his designated subordinate as 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 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 Article. 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 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 Article 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.

or 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 hearing officer shall not assess costs of administration 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 hearing officer, but does not appear, (s) he shall be notified in writing of the decision.

17.99.13. APPEALS

Any interested party may appeal the decision of the hearing officer by filing a written notice of appeal with the said hearing officer within five days after this decision. Such appeal shall be heard by the City Council, which may affirm, amend or reverse the order or take other action deemed appropriate. The City Council shall give written notice of the time and place of the hearing to the appellant and those persons specified in the land use ordinance pertaining to hearings on appeals. In conducting the hearing the City Council shall not be limited by the technical rules of evidence.

17.99.14 VEHICLE DISPOSAL

- a. Five days after adoption of the order declaring the vehicle or parts thereof to be a public nuisance or five days from the date of mailing of notice of the decision, as required by Section 17.99.11, whichever date is later, the vehicle or parts thereof may be disposed of by removal to a scrap yard or automobile dismantlers yard.

If such commercial sites are not available or are inadequate the vehicle/or parts may be disposed at any public disposal, which will accept the same. 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 Section 5004 of the California Vehicle Code, in which case the vehicle may be reconstructed or made operable.

- b. With respect to abandoned or inoperable vehicles located upon a parcel that is either (1) zoned for agricultural use or (2) not improved with a residential structure containing one or more dwelling units, prior to the final disposition of a vehicle or part therefore where notice pursuant to Section 17.99.10 was not required and for which evidence of registration was recovered pursuant to Section 17.99.15 the Enforcement Officer or a contractor or franchise under Section 17.99.8 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 12 days after the notice is mailed, from a location specified in Vehicle Code 22662, final disposition may proceed. Neither the City nor a contractor or franchise under this Article shall be liable for damage caused to a vehicle or part thereof for removal pursuant to this ordinance.

17.99.15 NOTICE TO DEPARTMENT OF MOTOR VEHICLES

Within five 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 any evidence of registration available, including registration certificates, certificates of title, and license plates.

17.99.16 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 17.99.12 are not paid within 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 38773.5 and shall be transmitted to the tax collector for collection. Said assessment shall have the same priority as other county or city taxes.

17.99.17 REFUSAL TO ABATE

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 Article or state law, where such state law is applicable.

17.99.18 SEVERABILITY

Should any section, subsection, paragraph, clause, or phrase of this Article 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 Article.

SECTION 2: This ordinance shall be effective thirty (30) days after its adoption and the City Clerk shall cause a certified copy of this ordinance to be published one time within fifteen (15) days after its adoption in the Imperial Valley Press, a newspaper of general circulation printed in Imperial County and circulated in the city of Brawley.

APPROVED, PASSED AND ADOPTED at a regular meeting of the City Council held on the 4th day of May, 2010.

CITY OF BRAWLEY, CALIFORNIA

Ryan E. Kelley, Mayor

ATTEST:

Alma Benavides, City Clerk

**STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
CITY OF BRAWLEY)**

1st Reading

I, Alma Benavides, City Clerk of the City of Brawley, California, **DO HEREBY CERTIFY** that the foregoing Ordinance No. 2010-06 was passed and adopted by the City Council of the City of Brawley, California, at a regular meeting held on the 20th day of April, 2010 and that it was so adopted by the following roll call vote: m/s/c Nava/Campbell 4-1 Miranda abstain

AYES: Campbell, Couchman, Kelley, Nava
NAYES: None
ABSTAIN: Miranda
ABSENT: None

DATED: April 20, 2010

Alma Benavides, City Clerk

2nd Reading & Adoption

I, Alma Benavides, City Clerk of the City of Brawley, California, **DO HEREBY CERTIFY** that the foregoing Ordinance No. 2010-06 was passed and adopted by the City Council of the City of Brawley, California, at a regular meeting held on the 4th day of May, 2010 and that it was so adopted by the following roll call vote:
m/s/c Campbell/Couchman 5-0

AYES: Campbell, Couchman, Kelley, Miranda, Nava
NAYES: None
ABSTAIN: None
ABSENT: None

DATED: May 4, 2010

Alma Benavides, City Clerk