

ORDINANCE NO. 2004-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, ADDING SECTIONS 1.12.130(B)15 AND 8.32.022 AND DELETING SECTION 10.12.040B TO THE HESPERIA MUNICIPAL CODE RELATING TO NUISANCE VEHICLES AND THE SEIZURE AND FORFEITURE OF NUISANCE VEHICLES.

WHEREAS, the Hesperia City Council has heard numerous complaints from their citizens about nuisance conditions created by persons who drive their vehicles to illegally dump refuse and waste recyclables and solid waste in vacant lands within the City; and

WHEREAS, the Hesperia City Council has also heard many complaints about nuisance conditions caused by off-highway vehicles including, noise, dust, safety concerns, and even deterioration of property values; and

WHEREAS, complaints have also been raised about nuisance conditions created by persons driving vehicles in order to acquire or attempt to acquire controlled substances or to solicit acts of prostitution; and

WHEREAS, California Government Code Section 38771 permits the City Council to determine what constitutes a nuisance; and

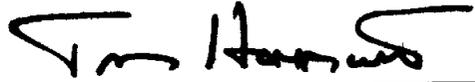
WHEREAS, declaring as a nuisance the vehicles used to illegally dump refuse and waste, illegally operate off of the highway, or to solicit acts of prostitution, and seizure and forfeiture of the same vehicles will serve as deterrent to individuals considering those acts.

NOW THEREFORE, BE IT RESOLVED THAT THE HESPERIA CITY COUNCIL DOES ORDAIN AS FOLLOWS:

- Section 1. All of the facts set forth in this Ordinance are true, correct.
- Section 2. Based upon substantial evidence presented to the City Council, including written and oral staff reports, the City Council specifically finds that the proposed Ordinance is consistent with the goals and objectives of the City's General Plan.
- Section 3. Section 1.12.130(B)15 of the Hesperia Municipal Code is hereby added as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.
- Section 4. Section 8.32.022 of the Hesperia Municipal Code is hereby added as set forth in Exhibit "B" attached hereto and incorporated herein by this reference
- Section 5. Section 10.12.040B of the Hesperia Municipal Code is hereby deleted.
- Section 6. This Ordinance shall take effect thirty (30) days from the date of adoption.

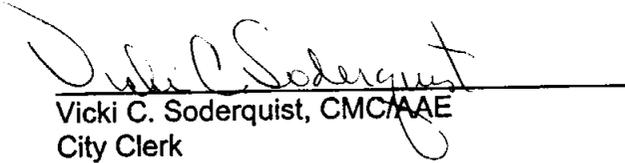
Section 7. The City Clerk shall certify to the adoption of the Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution 93-78.

ADOPTED AND APPROVED this 1st day of September 2004.



Tad Honeycutt, Mayor

ATTEST:



Vicki C. Soderquist, CMCAAE
City Clerk

Exhibit "A"

Chapter 1.12 Municipal Code Enforcement

1.12.130(B)15 Nuisance Vehicles.

A. All rights, title and interest to the vehicle shall vest in the City upon commission of the act giving rise to the nuisance described in Section 8.32.022.

B. Vehicles determined to be nuisance vehicles under Section 8.32.022 are subject to forfeiture and may be seized by any peace officer under the following conditions:

1. Process is served by any court having jurisdiction over the vehicle.
2. The seizure is incident to an arrest or search pursuant to a search warrant.
3. There is probable cause to believe that the vehicle was used in violation of

Chapter 8.32.022 of this Code.

C. If the City determines that the factual circumstances warrant the vehicle was used to commit the act or acts described in Section 8.32.022, the City shall petition the court for forfeiture.

1. The petition shall be filed as soon as practicable, but in any case within one year of the seizure of the vehicle.

2. The City shall cause notice of the seizure and of the intended forfeiture proceedings, as well as notice that any interested party may file a claim with the Superior Court to any person who has an interest in the vehicle. Notice shall also be posted in a newspaper of general circulation in San Bernardino County. Notice shall include a description of the vehicle, the date and place of the seizure, the violation of the law leading to the forfeiture, and instructions and time limits for filing a claim.

3. The City shall investigate any claim as to the claimant's rights, title, or interest. If the City finds that any person, other than the registered owner, is the legal owner of the vehicle, and that such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, it shall send a notice to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or other appropriate agency.

4. Upon proof by a preponderance of the evidence that the vehicle was used to commit an act or acts described in Section 8.32.022, the court shall declare the vehicle a nuisance and order the vehicle seized, if not previously seized, forfeited and sold with the proceeds distributed pursuant to this Section.

5. If no claims are filed, the City shall prepare a written declaration of forfeiture of the vehicle to the court and dispose of the vehicle. Copies of the declaration of forfeiture shall be provided to any person who received notice of the forfeiture proceedings.

D. Upon proof that the vehicle was used for any purpose set forth in Section 8.32.022 the court shall declare the vehicle a nuisance and order the vehicle to be forfeited, sold, and the proceeds distributed as follows:

1. To the mortgage or lien holder of the vehicle, up to the amount of his or her interest in the vehicle, when the court declares a distribution to that person.

2. To the City for all expenditures made or incurred by it in connection with the seizure, storage, and sale of the vehicle.

3. Remaining funds, if any, shall be placed in the City's General Fund.

E. The City shall return a seized vehicle upon the filing of a timely claim and providing evidence that one of the following exist.

1. The vehicle is owned by two or more persons and there is a community property interest in the vehicle by a person other than the person who used or maintained the vehicle in violation of Section 8.32.022, and that the vehicle is the sole vehicle available to the persons immediate family.

2. The vehicle is owned by a rental car agency with a duly executed contract with the person who used or maintained the vehicle in violation of Section 8.32.022.

3. For purposes of this Section, a claim shall be filed within ten (10) days of the date of the seizure notice, shall be filed with the Superior Court of San Bernardino County, and shall state the persons interest in the vehicle. The claimant shall serve an endorsed copy of the claim on the City within ten (10) days of filing the claim.

F. Any person who owns, leases, uses or maintains a vehicle in violation of Section 8.32.022, and whose vehicle has been seized, may request to execute a voluntary settlement agreement with the City for return of the vehicle. At the minimum, the agreement shall include the City's reasonable administrative costs including attorney's fees.

G. This Section is not the exclusive regulation or penalty for the acts described in Section 8.32.022. It is the intention of the Hesperia City Council to use any and all remedies allowed by this Code and State Law to enforce the provisions of this Code.

Exhibit "B"

Chapter 8.32 Public Nuisances

8.32.022 Nuisance Vehicles

- A. Any vehicle used to illegally dump refuse, recyclable material, solid waste, septage, construction or demolition waste, or any other waste material is declared a public nuisance.
- B. Any vehicle used to solicit an act of prostitution and/or used to acquire or attempt to acquire, or to transport any controlled substance is declared a public nuisance.
- C. Any off-highway or other vehicle operated within the public right-of-way without a proper license, or operated in violation of any other Section of this Code or of the California Vehicle Code is declared a public nuisance.
- D. Any off-highway vehicle driven or operated on lands belonging to or occupied by another, without having in the drivers or operators immediate possession, written permission of the landowner or responsible person, is declared a public nuisance.
- E. Any off-highway vehicle driven or operated within 200 yards of an occupied dwelling, church, school, office, medical facility, assembly building, recreational facility or other facility occupied by human beings; or within 200 yards of a barn, stable, or pasture used for the keeping of animals, is declared a public nuisance.
- F. This Section shall not apply to the use of farm vehicles for agricultural purposes, vehicles used for construction and grading purposes, vehicles used for governmental purposes; golf carts being used on golf courses and, off-highway vehicles used on a permitted race track or off-highway vehicle park.

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF HESPERIA)

I, Vicki C. Soderquist, City Clerk of the City of Hesperia, California, do hereby certify that Ordinance No. 2004-21 was introduced at a Regular Meeting of the City of Hesperia City Council held on August 18, 2004 by the following vote to wit:

AYES: Lindley, Nowicki, Pack, Vogler
NOES: Honeycutt
ABSTAIN: None
ABSENT: None

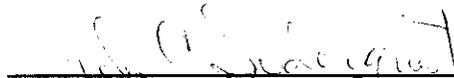


Vicki C. Soderquist, CMC/AAE
City Clerk



I, Vicki C. Soderquist, City Clerk of the City of Hesperia, California, do hereby certify that Ordinance No. 2004-21 was duly and regularly adopted at a Regular Meeting of the City of Hesperia City Council held on September 1, 2004 by the following vote to wit:

AYES: Lindley, Nowicki, Pack, Vogler
NOES: Honeycutt
ABSTAIN: None
ABSENT: None



Vicki C. Soderquist, CMC/AAE
City Clerk



I, _____, City Clerk of the City of Hesperia, California, do hereby certify that the foregoing Ordinance No. 2004-21 is a full, true and correct copy of that now in file in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Hesperia, California, this _____ day of _____.

Vicki C. Soderquist, CMC/AAE
City Clerk

Seal