

MEMORANDUM OF LAW

DATE: September 20, 1985

TO: Councilman William Jones

FROM: City Attorney

SUBJECT: Vehicle Abatement Ordinance

Your office has raised several questions regarding the sufficiency of complaints under the City's abandoned vehicle abatement program (San Diego Municipal Code section 81.10 et seq.) The Property and Police Departments have raised similar questions.

In response to your inquiries, my research and analysis has led to the following conclusions:

- 1) Members of the Police Department may initiate complaints to abate abandoned vehicles from private property in public view.
- 2) Members of Council staff may initiate complaints to abate abandoned vehicles from private property in public

view.

Various City agencies have adopted a policy of not abating abandoned vehicles unless a neighbor or a number of community residents sign a complaint against a particular vehicle at a precise location. This policy does comport with the exact definition of a public nuisance:

Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons. . . .

Penal Code section 370. See generally, Civil Code sections 3479 and 3480. Emphasis added.

Strict adherence to this definition, however, is contrary to case law. The existence of a public or private nuisance does not depend on the number of persons affected, but by the special injury to a particular individual. *Biber v. O'Brien*, 138 Cal.App. 353, 357 (1934). A nuisance is "public" where it affects rights enjoyed by citizens as part of the public. While a private nuisance affects the enjoyment of some private right not common to the public. See generally, *Reinhard v. Lawrence*

Warehouse Co., 41 Cal.App.2d 741, 745 (1940).

Moreover, it is unnecessary to follow the current abatement policy because the Legislature has implicitly found the storage of abandoned or wrecked vehicles to be a public nuisance.

Vehicle Code section 22660 grants municipalities the authority to enact an administrative abatement procedure for the removal of abandoned or wrecked vehicles. Inherent in this statute is the Legislature's determination that storage of abandoned, wrecked, dismantled or inoperative vehicles in public view is a public nuisance. See, Vehicle Code section 22660. This interpretation is supported by Vehicle Code section 22661(a) which makes abatement inapplicable to vehicles which are not visible from the street or other public or private property. Maintenance of such a vehicle within an enclosed structure would not cause any special injury to the public. San Diego's abatement program incorporates this limitation. See, San Diego Municipal Code section 81.10(v)(i).

Therefore, the issue of whether or not a wrecked or abandoned vehicle is a public nuisance is derived from the authorizing statute itself. The source of the complaint is actually irrelevant. If the vehicle is in the public's view, it is a public nuisance pursuant to the Legislature's determination.

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By

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cc Lt. J. D. Moody, San Diego Police Dept.

Steve West, Property Dept.