

ORDINANCE NO. 2434

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, REPEALING CHAPTER 2.50, "MOBILE HOME RENT REVIEW;" ADDING SECTIONS 3.08.080, "TAX DEFAULT INVESTIGATION AND HEARING," 3.08.090, "APPEALS," AND 3.08.115, "ENJOINING COLLECTION PROHIBITED," TO CHAPTER 3.08, "TRANSIENT OCCUPANCY TAX;" REPEALING SECTION 9.24.010, "PLAYING MECHANICAL GAMES," OF CHAPTER 9.24, "OFFENSES BY AND AGAINST MINORS;" REPEALING CHAPTER 9.21, "REGISTRATION OF FELONS;" AND AMENDING SECTION 9.70.020, "DEFINITIONS," OF CHAPTER 9.20, "DRUG FREE ZONES," OF THE MERCED MUNICIPAL CODE

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

SECTION 1. DELETION FROM CODE. Chapter 2.50, "Mobile Home Rent Review," of the Merced Municipal Code is hereby repealed.

SECTION 2. ADDITION TO CODE. Sections 3.08.080, Tax Defaulted Investigation and Hearing," and 3.08.090, "Appeals," of the Merced Municipal Code are hereby added to read as follows:

"3.08.080 Tax default investigation and hearing.

If any operator fails or refuses to collect such tax and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the finance officer shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the finance officer procures such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and

payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the finance officer shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the finance officer for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the finance officer shall become final and conclusive and immediately due and payable. If such application is made, the finance officer shall give not less than five (5) days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in such notice why such amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the finance officer shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days.

3.08.090 Appeals.

A. Any operator aggrieved by any decision of the finance officer with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The City Council shall fix a time and place for hearing such appeal, and the City

Clerk shall give notice in writing to such operator at his last known place of address. The findings of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing.

B. Payment of all tax, interest, and penalties shall be required at the time a notice of appeal is filed with the City Clerk. No appeal pursuant to this section shall be taken unless such payment in full is made.

C. Any taxes the City Council determines should not have been assessed shall be refunded to the operator, along with the apportioned interest and penalties paid on such taxes.”

SECTION 3. ADDITION TO CODE. Section 3.08.115, “Enjoining Collection Prohibited,” is hereby added to the Merced Municipal Code to read as follows:

“3.08.115 Enjoining Collection Prohibited.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this Chapter, and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability.”

SECTION 4. DELETION FROM CODE. Section 9.24.010, “Playing Mechanical Games,” of the Merced Municipal Code is hereby repealed.

SECTION 5. DELETION FROM CODE. Chapter 9.32, “Registration of Felons,” of the Merced Municipal Code is hereby repealed.

SECTION 6. AMENDMENT TO CODE. Section 9.70.020, “Definitions,” of Chapter 9.70, “Drug Free Zones,” of the Merced Municipal Code is hereby amended to read as follows:

“9.70.020 Definitions.

A. The terms ‘park’ and ‘public parks’ mean any public parks, youth centers, swimming pools, and bike paths, within the City of Merced which are owned, operated or maintained by the City by its own forces or by contract, including, but not limited to, publicly-owned recreation and playground areas, any buildings or recreation facilities thereon, and any parking lot areas adjacent thereto.

B. The term ‘public library’ means and includes any and all public libraries within the City of Merced city limits.”

SECTION 7. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 8. 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 9. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

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The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the 18th day of August, 2014, and was passed and adopted at a regular meeting of said City Council held on the 2nd day of September, 2014 by the following called vote:

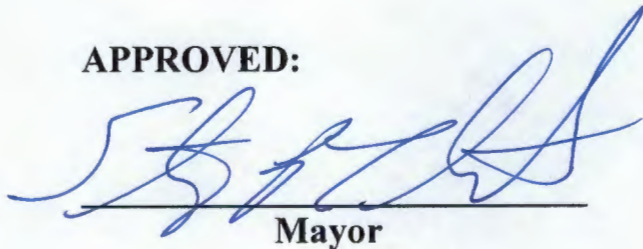
AYES:6 **Council Members:** BLAKE, DOSSETTI, LOR, MURPHY, PEDROZO, THURSTON

NOES:0 **Council Members:** NONE

ABSTAIN:0 **Council Members:** NONE

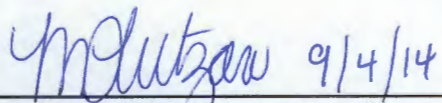
ABSENT: 1 **Council Members:** BELLOUMINI

APPROVED:



Mayor

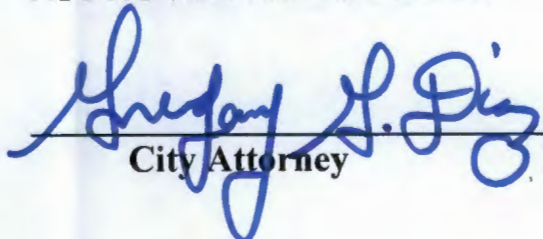
ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY:  9/4/14
Assistant/Deputy City Clerk



(SEAL)

APPROVED AS TO FORM:

 8/7/2014
City Attorney **Date**