

Chapter 9.20

PROPERTY DEFACEMENT

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9.20.010 Purpose and intent.

It is the purpose and intent of the city council of the city, through the adoption of this chapter, to provide additional abatement and enforcement tools to protect public and private property from acts of vandalism and defacement; especially, but not limited to, graffiti on privately and publicly owned property, which is inimical and destructive of the rights and values of private property owners as well as the total community. The majority of those individuals who paint graffiti seek notoriety and recognition as they attach status to having their work seen. Prolonged visibility due to the sheer volume, scale and complexity of the graffiti, and placement of the graffiti in hard-to-reach places, enhance the perpetrator's satisfaction. Therefore, the swift removal or painting over of graffiti in combination with criminal prosecution of the persons who create it is the most effective way of combating this very serious problem. It is further the intent of the city council, through the adoption of this notice to all of those who callously disregard the property rights of others, that the law enforcement agencies of the city, both the police department and the prosecutor's office, will strictly enforce the law and severely prosecute those persons engaging in the defacement of public and private properties. (Ord. 2997 § 1, 2005; Ord. 2496 § 1, 1992; Ord. 2337 § 2, 1989; Ord. 1924 § 1, 1982).

9.20.020 Definitions.

A. As used in this section, "graffiti" includes any inscription, word, figure, or design that is marked, etched, scratched, drawn, painted, pasted or otherwise affixed to or on any surface, regardless of the nature of the material of that structural component, to the extent that same was not authorized in advance by the owner thereof.

B. "Aerosol paint container" means any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint or other substances capable of defacing property.

C. "Felt tip marker" means any indelible marker or similar implement with a tip which, at its broadest width, is greater than one-eighth inch, containing an ink that is not water-soluble.

D. "Glass etching products" means any product which can be used to permanently alter a glass surface, including but not limited to such products that contain hydrofluoric acid, ammonium bifluoride and sulfuric acid, or sodium bifluoride.

E. "Graffiti implement" means an aerosol paint container, a felt tip marker, a graffiti stick or glass etching products.

F. "Graffiti stick" means a device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure, and upon application, leaving a mark at least one-eighth of an inch in width, visible from a distance of 20 feet, and not water-soluble. (Ord. 2997 § 1, 2005; Ord. 2865 § 1, 2002; Ord. 2496 § 1, 1992; Ord. 2470 § 1, 1991; Ord. 2464 § 1, 1991; Ord. 2454 § 1, 1991; Ord. 2337 § 2, 1989; Ord. 1924 § 1, 1980).

9.20.030 Anti-vandalism provisions.

A. Unlawful to Apply Graffiti. It shall be unlawful for any person to apply graffiti on any public or privately owned structures located on public or privately owned real property within the city.

B. Possession by Minors. It shall be unlawful for any person under the age of 18 years to have in his or her possession any graffiti implement while upon public property or upon private property without the consent of the owner of such private property, whose consent is given in advance and whose consent shall be given as to the person's presence while in the possession of a graffiti implement.

1. School Exception for Felt Tip Markers. The foregoing provision shall not apply while the person is attending, or traveling to or from, a school at which the person is enrolled, if the person is participating in a class at said school which has, as a written requirement of said class, the need to use felt tip markers.

C. Possession in Designated Public Places. No person shall have in his or her possession any graffiti implement while doing any activity at or around a public building or in any public park, playground, swimming pool, recreational facility, or while loitering in or near an underpass, bridge abutment, storm drain, and other similar types of infrastructure not normally used by the public except as may be authorized by the city. (Ord. 2997 § 1, 2005; Ord. 2496 § 1, 1992; Ord. 2337 § 2, 1989; Ord. 1924 § 1, 1980).

9.20.035 Permitting graffiti to remain – Criminal liability.

Repealed by Ord. 2496 § 1, 1992. (Ord. 2471 § 1, 1991; Ord. 2464 § 2, 1991).

9.20.037 Right of city to remove – Civil remedy.

Repealed by Ord. 2496 § 1, 1992. (Ord. 2472 § 1, 1991; Ord. 2470 § 2, 1991).

9.20.040 Punishment provisions.

A. Police Diversion Program – Community Service with Minimum Hours and Parental Involvement. In lieu of, or as part of, requesting prosecution of a petition to declare a minor to be a ward of the court under Welfare and Institutions Code Section 602 (including, but not limited to, offenses which, in the opinion of the police chief, constitute a violation of this chapter), or in lieu of prosecuting a violation of this chapter as a crime against an adult, the police chief, with the approval of (or according to rules and procedures approved by) the city manager, shall be authorized to offer said minor or adult an option to perform such community service as the police chief deems appropriate, but which community service shall, if offered at all, contain the following minimum elements:

1. The minor shall perform at least 30 hours of community service.
2. At least one of the custodial parents or, if none, guardians shall be in attendance at least 50 percent of the period of assigned community service.
3. The entire period of community service shall be performed under the supervision of a community service provider approved by the chief of police.
4. Reasonable effort shall be made to assign the subject minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult.

B. Mandatory Juvenile Delinquent Community Service. Any minor determined to be a ward of the court under Welfare and Institutions Code Section 602 as a result of committing an offense in the city shall be required, at the city's option, to perform community service.

C. Penalties for Violation. Any and all violations of this chapter shall be punishable either as an infraction or a misdemeanor, at the discretion of the city attorney. Violations of CVMC 9.20.055(A)(2), Failure to Remove Graffiti Unlawful, are only punishable by the imposition of an administrative fine, penalty, or abatement action, pursuant to Chapters 1.30, 1.40 and 1.41 CVMC. (Ord. 2997 § 1, 2005; Ord. 2549 § 1, 1993; Ord. 2496 § 1, 1992; Ord. 2464 § 1, 1991; Ord. 2454 § 2, 1991; Ord. 2337 § 2, 1989; Ord. 1924 § 1, 1980).

9.20.045 Detection provisions.

A. Reward Authority.

1. Pursuant to Section 53069.5 of the Government Code, the city does hereby offer a reward of \$150.00 for information leading to the arrest and conviction of any person for violation of Penal Code Section 594 by the use of graffiti, not to exceed \$300.00 per incident of graffiti. In the event of multiple contributors of information, the reward amount shall be divided by the city in the manner it shall deem appropriate. For the purposes of this section, diversion of the offending violator to a community service program, or a plea bargain to a lesser offense, shall constitute a conviction.
2. Claims for rewards under this section shall be filed with the city. Each claim shall:
 - a. Specifically identify the date, location and kind of property damaged or destroyed.
 - b. Identify by name the person who was convicted, or confessed to the damage or destruction of the city property.
 - c. Identify the court in and the date upon which the conviction occurred or the place and the date of the confession.
3. No claim for a reward shall be allowed by the city council unless an authorized representative of the city investigates and verifies the accuracy of the claim and recommends that it be allowed.
4. The person committing the graffiti, and if an unemancipated minor then the custodial parent of said minor, shall be liable for reward paid pursuant to this section. (Ord. 2997 § 1, 2005; Ord. 2496 § 1, 1992; Ord. 2464 § 1, 1991; Ord. 2454 § 3, 1991).

9.20.050 Accessibility to graffiti implements.

A. Furnishing to Minors Prohibited. It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or cause to permit to be exchanged, given, loaned, or otherwise furnished, any felt tip marker, graffiti stick, or graffiti implement to any person under the age of 18 years without the consent of the parent or other lawfully designated custodian of the person, which custodial consent shall be given in advance in writing.

B. Wrongful Display for Sale. No person, firm or entity engaged in a commercial enterprise (“seller”) shall display for sale, trade or exchange any graffiti implement except in an area from which the public shall be securely precluded without employee assistance. Two such acceptable methods for displaying a graffiti implement for sale shall be by containment in: (1) a completely enclosed cabinet or other storage device which shall be permanently affixed to a building or building structure, and which shall, at all times except during access by authorized representatives, remain securely locked; or (2) in an enclosed area behind a sales or service counter from which the public is precluded from entry.

C. Wrongful Storage. No person shall store any graffiti implement except in either: (1) a completely enclosed room which shall, at all times except during access or substantial occupancy by the owner or an authorized adult representative of the owner, remain securely locked; or (2) in a completely enclosed cabinet or other storage device which shall be permanently affixed to a building or building structure, and which shall, at all times except during access by the owner or an authorized adult representative of the owner, remain securely locked. For the purposes of this section, an owner or authorized representative of the owner shall be deemed to have substantial occupancy of a room even during short periods of absence if the room is part of a larger structure which is occupied by the owner.

1. Enforcement Policy on Wrongful Storage Offenses. It shall be the intention of the city to enforce this provision against the wrongful storage of graffiti implements only when its violation has caused or contributed to an act of vandalism by a third party.

D. Civil Responsibility for Damages for Wrongful Display or Storage. Any person who displays or stores a graffiti implement in violation of the provisions of this chapter shall be personally liable for any and all costs incurred by any party in connection with the removal of graffiti, or the repair of any property containing graffiti, caused by any person who shall use such graffiti implement in violation of the provisions of California Penal Code Section 594, and for all attorney’s fees and court costs incurred in connection with the civil prosecution of any claim for damages, not to exceed \$1,500. (Ord. 2997 § 1, 2005; Ord. 2865 § 1, 2002; Ord. 2496 § 1, 1992; Ord. 2473 § 1,

1991; Ord. 2470 §§ 3 – 6, 1991; Ord. 2464 § 1, 1991; Ord. 2454 § 3, 1991; Ord. 2337 § 2, 1989; Ord. 1924 § 1, 1980).

9.20.055 Removal provisions.

A. Declaration of Nuisance.

1. Graffiti as a Nuisance. The existence of graffiti within the city limits of the city is a public and private nuisance, and may be abated or enforced according to the provisions and procedures contained in this chapter or the administrative enforcement and abatement provisions found in CVMC Title 1.

2. Failure to Remove Graffiti Unlawful. It shall be unlawful for any person who is the owner or who has primary responsibility for control of real or personal property or who has primary responsibility for the repair or maintenance of the property (“responsible party”) to permit said property, even if located in the city right-of-way, to remain defaced with graffiti, visible to the public, for more than 48 hours. Property shall be considered no longer defaced when the graffiti is removed or the defaced area is covered by paint which is similar in shade and color to the surface the graffiti resides on. If the graffiti is on glass or some other material, which can be scraped without damaging the material, the graffiti shall be removed and not painted over. Federal, state and local entities (besides the city of Chula Vista) may be considered a responsible party for purposes of this chapter.

Utilities or responsible parties with an active program for the removal of graffiti and who own or maintain more than 50 unattended structures throughout the city (hereinafter “multiple property owners”) shall have an additional 48 hours to remove graffiti from those structures.

B. Right of City to Remove.

1. Use of Public Funds. Whenever the city becomes aware, or is notified and determines, that graffiti is so located on public or privately owned property viewable from a public or quasi-public place within the city, the city shall be authorized to use public funds for the removal of same, or for the painting or repairing of same, but shall not authorize or undertake to provide for the painting or repair of any more extensive area than that where the graffiti is located, unless the city manager, or his/her designee, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community.

2. Right of Entry. If a responsible party fails to remove graffiti within 48 hours of being notified by the city, or 96 hours for multiple property owners, the city manager or his/her designee (including an independent contractor) shall have the right to enter onto the property, paint over or remove said graffiti.

a. Notice – Method of Service. Before entering onto a person’s property to abate graffiti, the city shall notify the responsible party in writing of its intent to do so. Said notice shall be served by any of the following methods:

- i. Delivering to and leaving personally with the responsible party or a person of suitable age and discretion who resides or is employed at the property (“personal service”); or
- ii. Certified mail, postage prepaid, return receipt requested to the last known address of the responsible party (simultaneously, a duplicate notice may be sent by regular mail, postage prepaid); or
- iii. If the graffiti is on attended/occupied property, by posting or hanging a notice on the defaced property in a manner most likely to give actual notice to the responsible party.

All multiple property owners shall establish an agent for service of process with an address and facsimile number where the owner can be notified during normal business hours (8:00 a.m. to 5:00 p.m.). Successful delivery of a notice to the agent’s address or successful transmission of a facsimile to the number provided shall be an acceptable method of service for multiple property owners.

b. Notice – When Served. The notice shall be deemed served and the responsible party “notified” at the time of personal service; or the successful delivery of the certified letter (or the third day after mailing of

the duplicate notice); or 48 hours after the notice is posted on the property; or when a facsimile is successfully transmitted to the multiple property owner's agent for service of process. Actual notice shall cure any defect in the effort to provide constructive notice.

c. Contents of Notice. The notice shall include the municipal code section being violated; the property address/location where the graffiti has been observed; the date(s) and time(s) the graffiti was observed; a description of the corrective action required and time limit – including the need to use paint which is similar in shade and color to the structure or item the graffiti is painted on; the consequences of failing to comply, all hearing/appeal rights; and the name of the issuing officer or staff member.

d. Securing Owner Consent. Prior to entering onto private property for the purpose of graffiti removal, the city shall attempt to secure the written or oral consent of the responsible party, which may be incorporated into the required written notice. The responsible party may execute and file with the city a consent form that authorizes the city, without notice, to immediately enter onto the property to paint over any graffiti. Such consent shall be effective indefinitely, until withdrawn in writing by the responsible party.

e. Graffiti in "Privacy Areas." Unless a warrant or proper consent is secured, the city shall not remove or paint over graffiti if it is located in an area where the property owner or occupant has a reasonable expectation of privacy ("privacy area"). Likewise, the city shall not remove or paint over graffiti that is not in a privacy area if a privacy area must be entered to abate said graffiti.

f. Pre-Abatement Conference. A responsible party may request, by telephone, in writing, or in person, that an informal conference be held before the city enters the party's property to abate graffiti. The request for a conference shall stay the city's abatement efforts and must be made within 48 hours of being served notice pursuant to subsection (B)(2)(a) of this section. The conference shall be conducted by the city manager or his/her designee. The purpose of the conference shall be to determine the propriety of the city's impending abatement action. A decision on the validity of that action shall be made and communicated to the responsible party before the end of the conference (unless a continuance is necessary). If determined to be valid, the city may abate the offending graffiti 48 hours after the decision.

C. Ease of Removal Provisions.

1. Common Utility Colors and Paint Type. Any gas, telephone, water, sewer, cable, telephone and other utility operating in the city, other than an electric utility, shall paint their above-surface metal fixtures with a uniform paint type and color which meets with the approval of the city manager. Utility boxes which are part of a beautification program (e.g., utility box artwork project) shall be exempt from this requirement.

2. Conditional Encroachment Permits. All encroachment permits issued by the city shall, among such other things, be conditioned on: (a) the immediate removal by the permittee of any graffiti; (b) the right of the city to remove graffiti or to paint the encroaching object; (c) providing the city with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object containing graffiti.

3. Conditional Tentative Maps. In approving tentative or parcel maps, conditional use permits, variances, or other similar land use entitlements, the city shall consider imposing any or all of the following conditions, or other similar or related conditions, at the public hearing required by law for approval of the tentative map, conditional use permit, variance or other similar land use entitlement:

a. Right of Access to Remove Graffiti. Developer shall grant, prior to resale of any of the parcels which are within the territory of said map, the right of entry over and access to such parcels, upon 48 hours' posting of notice, by authorized city employees or agents, to the city for the purpose of removing or "painting over" graffiti from graffiti-attracting surfaces previously designated by the director, and the right to remove such graffiti;

b. Supply City with Graffiti Removal Material. Developer shall, for a period of two years after the resale of their final lot, provide the city with sufficient matching paint and/or anti-graffiti material on demand for use in the painting over or removal of designated graffiti-attracting surfaces; and

c. Owner to Immediately Remove Graffiti. Developer shall, either as part of the conditions, covenants and restrictions, or as separate covenants recorded against individual lots, prior to resale of same, covenant, which covenant shall run with the land and be for the benefit of the city, in a form satisfactory to the city, that the owner of the lots shall immediately remove any graffiti placed thereon. (Ord. 2997 § 1, 2005; Ord. 2496 § 1, 1992).

9.20.060 Prevention provisions.

A. Design of New Graffiti-Attracting Surfaces. Any applicant for design review approval, conditional use permit, special use permit, unclassified use permit, development agreement, or other form of development or building permit shall, to the extent deemed feasible by the city manager, or his or her designee, have designed any building structures visible from any public or quasi-public place in such a manner as to consider prevention of graffiti, including, but not limited to, the following: (1) use of additional lighting; (2) use of nonsolid fencing; (3) use of landscaping designed to cover large expansive walls such as ivy or similar clinging vegetation; and (4) use of architectural design to break up long continuous walls or solid areas.

B. Retrofit Existing Graffiti-Attracting Surfaces. The following preventative measures may be ordered after providing adequate notice and the opportunity for a Chapter 1.30 CVMC abatement hearing. No graffiti need currently reside on the property before instituting such a proceeding, the city must only show that the surface of a structure has been defaced more than four times in six months and that the proposed retrofit is necessary and reasonable.

1. At Owner's Expense. Any surface of a structure on a parcel of land which has been defaced with graffiti more than four times in six months, or the immediate area surrounding said surface, shall be required to be retrofitted, at the cost of the property owner of said lot, with such features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof. In exercising the authority hereunder, the city may not impose a cost on the property owner greater than \$750.00.

2. At City's Cost. The owner of property on which is located a surface of a structure which has been defaced with graffiti more than four times in six months, or the immediate area surrounding said surface, shall permit the city to enter upon and make such modifications thereto, at city's cost, which modifications shall include such features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof. (Ord. 2997 § 1, 2005; Ord. 2496 § 1, 1992).

9.20.065 Parental involvement provisions.

A. Parental Civil Liability. Any parent or other legal guardian who consents to, permits, or otherwise knowingly allows her or his child under the age of 18 to possess a graffiti implement shall be personally liable for any and all costs to any person (including public entities) incurred in connection with the removal of graffiti caused by said child, or by said graffiti implement, and for all attorney's fees and court costs incurred in connection with the civil prosecution of any claim for damages. (Ord. 2997 § 1, 2005; Ord. 2496 § 1, 1992).

9.20.067 Collection of abatement costs through the juvenile court.

A. For purposes of this section only, the following definitions are applicable:

1. "Minor" means a person under the age of eighteen (18) years who has been convicted of violation of Section 594, 594.3, 594.4, 640.5, 640.6 or 640.7 of the Penal Code, or has been found to be a person described by Section 602 of the Welfare and Institutions Code by reason of the commission of an act prohibited in the Penal Code sections identified in this subdivision.

2. "Graffiti Abatement Costs and Expenses" includes:

a. the average law enforcement costs per unit of measure incurred in identifying and apprehending a Minor; and

b. the average costs per unit of measure incurred by the city in removing graffiti; and

c. the average cost per unit of measure incurred by the city in repairing and replacing property of the types frequently defaced with graffiti that cannot be removed cost effectively.

B. The San Diego County probation office and its agents, employees, and assigns are hereby authorized, on behalf of the city, to collect from the Minor, the Minor's estate, or the Minor's parent or guardian, the city's Graffiti Abatement Costs and Expenses through juvenile court proceedings, and to promptly transfer said funds to the city.

C. Updated Graffiti Abatement Costs and Expenses findings shall be reviewed and adopted by the City Council at least once every three years. Immediately after adoption, the city clerk shall cause a certified copy of the ordinance adopted pursuant to this section and any resolution containing updated cost findings to be forwarded to the clerk of the juvenile court in San Diego County and to the probation office of San Diego County.

9.20.070 Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter 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 chapter. The City Council declares that it would have adopted each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional. (Ord. 2997 § 1, 2005; Ord. 2496 § 1, 1992).