



City of Chula Vista

Staff Report

File#: 18-0093, **Item#:** 2.

ORDINANCE NO. 3416 OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 9.20 TO PERMIT RECOVERY OF THE CITY'S AVERAGE COSTS RELATED TO GRAFFITI ABATEMENT AND REMEDIATION BY THE SAN DIEGO PROBATION OFFICE IN JUVENILE COURT PROCEEDINGS AND ADOPTING THE 2018 CHULA VISTA GRAFFITI ABATEMENT COST AND EXPENSES MATRIX (SECOND READING AND ADOPTION)

RECOMMENDED ACTION

Council adopt the ordinance.

SUMMARY

The proposed ordinance amending Chapter 9.20 and adopting the 2018 Graffiti Abatement Costs and Expenses Matrix bring the City's graffiti remediation cost recovery program into compliance with state law to facilitate further cost recovery through restitution in juvenile proceedings involving graffiti defacement.

ENVIRONMENTAL REVIEW

Environmental Notice

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Environmental Determination

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA.

BOARD/COMMISSION RECOMMENDATION

Not Applicable

DISCUSSION

In 1994, the California state legislature adopted California Welfare & Institutions Code Section 742.10, et seq. which outlines a Graffiti Removal and Damage Recovery Program ("Program"). This Program was designed to deter graffiti, assist public and private property owners in recovering damages from a minor who defaces property, and to assist cities and counties in enabling them to recoup the full costs of graffiti remediation. The Program allows a city to elect, by ordinance, to have the probation officer of the county recoup for the city, through juvenile court proceedings, the city's costs associated with graffiti defacement by minors of city property and the property of others. A

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juvenile court may authorize restitution to a city based on that city's average costs to investigate and remediate graffiti, rather than requiring an individualized, actual cost calculation for each specific instance of conduct. However, in order to utilize the average cost model, a city ordinance must, among other things, authorize the probation department to recoup city costs as restitution in a juvenile proceeding and make cost findings related to the average cost of graffiti nuisance abatement, per unit of measure, in accordance with California Welfare and Institutions Code section 742.14(a)-(c).

Chula Vista Municipal Code Chapter 9.20 contains abatement and enforcement tools to address acts of vandalism and defacement on both public and private property, recognizing that graffiti violates and devalues both property owners and the larger community. Section 9.20.055 authorizes the use of City funds to abate graffiti as a nuisance. However, Chapter 9.20 does not authorize the probation department to recoup City costs as restitution in a juvenile proceeding and does not incorporate cost findings related to City's average costs per unit of measure incurred by law enforcement in identifying and apprehending a person convicted of relevant penal code sections or incurred by city in removing graffiti and repairing and replacing property. The California Supreme Court in *Luis M. v. Superior Court of Los Angeles County* (2014) 59 Cal.4th 300, has expressly stated that these elements are necessary to uphold a juvenile court restitution award based on a city's average cost to remove and remediate graffiti.

The proposed ordinance amends Chapter 9.20 to include elements missing from the current code provision. The 2018 City of Chula Vista Graffiti Abatement Costs and Expenses Matrix ("Matrix"), updated and approved by the City's finance department on September 28, 2017, is attached to the ordinance and reflects the City's average costs and expenses determination related to graffiti abatement. This Matrix includes labor and material costs, and establishes the average costs associated with graffiti ranging in size from 1' to 500'. The amendment to Chapter 9.20 and the adoption of findings reflecting the current costs and expenses reflected in the attached Matrix are intended to bring the City's ordinance into compliance with statutory and case law requirements, and to permit the City to recover the costs of graffiti abatement and remediation through juvenile court restitution orders. Accordingly, Staff recommends that the City Council adopt the proposed ordinance amending Chapter 9.20, including the cost findings and Matrix contained therein.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The proposed ordinances the City's Operational Excellence, Economic Vitality, and Strong and Secure Neighborhoods goals, as they permit the City to recover costs related to abating and remediating

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graffiti defacement that negatively impacts property owners and the larger community.

CURRENT YEAR FISCAL IMPACT

The subject amendments to Chapter 9.20 increase the City's opportunity to recover costs incurred by the City in removing and remediating graffiti. However, it is difficult and speculative to predict when such fees would be recovered and in what amounts.

ONGOING FISCAL IMPACT

The subject amendments to Chapter 9.20 increase the City's opportunity to recover costs incurred by the City in removing and remediating graffiti. However, it is difficult and speculative to predict when such fees would be recovered and in what amounts.

ATTACHMENTS

1. Proposed amended Chapter 9.20 with strikeout underline text
2. Proposed ordinance
3. Exhibit 1 attachment to proposed ordinance: 2018 City of Chula Vista Graffiti Abatement Costs and Expenses Matrix

Staff Contact: Megan McClurg