

ORDINANCE NO. 2496

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA AMENDING CHAPTER 9.20 OF THE MUNICIPAL CODE TO ADOPT THE MODEL GRAFFITI ORDINANCE SPONSORED BY THE SAN DIEGO DIVISION OF THE LEAGUE OF CALIFORNIA CITIES.

WHEREAS, graffiti has become a nuisance of catastrophic proportions in all areas of the County of San Diego, including the City of Chula Vista, thereby requiring a uniform, county-wide solution; and,

WHEREAS, based on a model graffiti ordinance initially sponsored by the City of Chula Vista, the San Diego Division of the League of California Cities has ratified a proposed model graffiti ordinance, and encouraged each of the respective cities in the County of San Diego to adopt said model; and,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHULA VISTA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 9.20 of the Municipal Code is hereby amended, in its entirety, to read as follows.

Chapter 9.20

PROPERTY DEFACEMENT

- 9.20.010 Purpose and intent.
- 9.20.020 Definitions.
- 9.20.030 Prohibition of defacement.
- 9.20.040 Punishment Provisions.
- 9.20.045 Detection Provisions.
- 9.20.050 Accessibility to Graffiti Implements.
- 9.20.055 Removal Provisions.
- 9.20.060 Prevention Provisions.
- 9.20.065 Parental Involvement Provisions.
- 9.20.070 Severability.

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 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 walls, which are inimical and destructive of the rights and values of private property owners as well as the total community. It is further the intent of the City Council, through the adoption of this notice upon 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.

9.20.020 Definitions.

A. Graffiti.

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, or, despite advance authorization, is otherwise deemed by the Council to be a public nuisance.

B. Aerosol Paint Container.

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

C. Felt Tip Marker.

"Felt tip marker" means any indelible marker or similar implement with a tip which, at its broadest width is greater than one-eighth (1/8th) inch, containing an ink that is not water-soluble.

D. Graffiti Stick

"Graffiti Stick" means a device containing an 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.

E. Graffiti Implement.

"Graffiti Implement" means an Aerosol Paint Container, a Felt Tip Marker, or a Graffiti Stick.

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 eighteen 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 (1) the person is attending, or travelling 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 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.

9.20.040 Punishment Provisions.

A. 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, including graffiti removal service of not less than 6 hours nor more than 80 hours.

B. 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.

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 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.

B. Reimbursement of Car Phone Air Time.

The City shall reimburse to any person reporting by means of a mobile or cellular phone an act of graffiti vandalism or existence of graffiti within the City limits in the amount of the direct phone charges, exclusive of taxes, etc., incurred by said person.

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 or permit to be exchanged, given, loaned, or otherwise furnished, any Felt Tip Marker or Graffiti Stick to any person under the age of eighteen 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 a 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.

9.20.055 Removal Provisions.

A. Right of City to Require Removal. (Self-Removal).

It is unlawful for any person who is the owner or who has primary responsibility for control of property or who has primary responsibility for the repair or maintenance of property ("Responsible Party") to permit property which is defaced with graffiti to remain so defaced for a period of seven (7) days after notice of same, unless (1) said person shall demonstrate by a preponderance of evidence that they do not have the financial or physical ability to remove the defacing graffiti; or (2) unless it can be demonstrated that the Responsible Party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property defaced with graffiti to remain defaced for a period of fifteen (15) days after notice of same.

B. 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 according to the provisions and procedures herein contained.

2. Graffiti Attracting Surface as a Nuisance.

The existence of any surface of a structure on a parcel of land which has been defaced with graffiti after removal more than 5 times in 12 months is a public and private nuisance, and may be abated by minor modifications thereto, or to the immediate area surrounding same, according to the provisions and procedures herein contained as follows: Said surface or surfaces shall be required to be retrofitted, at the cost of the property owner of said lot, not to exceed a total cost of \$500, or at the cost of the City at the City's option, 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.

C. 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 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, or unless the Responsible Party agrees to pay for the costs of repainting or repairing the more extensive area.

2. Right of Entry on Private Property Provisions.

a. Securing Owner Consent.

Prior to entering upon private property or property owned by a public entity other than the City, for the purpose of removal of graffiti, the City shall attempt to secure the consent of the Responsible Party, and a release of the City from liability for private or public property or liability damage.

b. Failure to Obtain Owner Consent.

If a Responsible Party fails to remove the offending Graffiti within the time herein specified, or if the City shall have requested consent to remove or paint over the offending Graffiti and the Responsible Party shall have refused consent for entry on terms acceptable to the City consistent with the terms of this Section, the City shall commence Abatement and Cost Recovery Proceedings for the removal of the graffiti according to the following procedure.

c. Abatement and Cost Recovery Proceedings.

(1) Notice and Conduct of Due Process Hearing.

The City Manager, or his or her designee, ("Hearing Officer") shall give not less than 48 hours notice, served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure (If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Section 6062.) to the Responsible Party or Partys who are responsible for the maintenance of a parcel of property containing graffiti ("Property"), and, if a different person is the owner of record of the parcel of land or which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current, then to said owner ("Owner") also, of a "due process" hearing at which said Responsible Party and Owner shall be entitled to present evidence and argue that his or her Property does not contain graffiti. The determination of the Hearing Officer after the "due process" hearing shall be final and not appealable. If, after the due process hearing, regardless of the attendance of the Responsible Party, Owner, or their respective agents, the Hearing Officer determines that the Property contains graffiti viewable from a public or quasi-public place, the Hearing Officer shall give written notice ("Eradication Order") that, unless the graffiti is removed within 5 days thereafter, the City shall enter upon the Property, cause the removal, painting over (in such color as shall meet with the approval of the Hearing Officer) or such other eradication thereof ("Eradication Effort") as the Hearing Officer determines appropriate, and shall provide the Responsibility Party and Owner thereafter with an accounting of the costs of such Eradication Effort on a "full cost recovery basis."

(2) Eradication Effort. Not sooner than the time specified in the Order of the Hearing Officer, the City Manager, or his designee, shall implement the Eradication Order,

and shall provide an accounting to the Responsible Party, and as appropriate, the Owner, of the costs thereof ("Eradication Accounting").

- (3) **Cost Hearing.** If the Responsible Party or Owner fails to request a hearing before the Hearing Officer on the Eradication Accounting ("Cost Hearing"), or if requested, and a Cost Hearing is conducted after extending due process to the Responsible Party and, as appropriate, the Owner, after such a Cost Hearing, the Hearing Officer determines that all or a portion of the Costs are appropriately chargeable to the Eradication Effort, the total amount set forth in the Eradication Accounting, or such amount thereof determined as appropriate by the Hearing Officer, ("Assessed Eradication Charges") shall be due and payable by the Responsible Party within 30 days. Any amount of Assessed Eradication Charges assessed by the Hearing Officer which are less than the total amount set forth in the Eradication Accounting shall be explained by written letter from the Hearing Officer to the City Councilmembers.
- (4) **Lien.** As to such Property where the Responsible Party is the Owner, if all or any portion of the Assessed Eradication Charges remain unpaid after 30 days, pursuant to the authority created by law, including Government Codes Section 38773, et seq., such portion thereof as shall remain unpaid shall constitute and is hereby declared to constitute a lien on the Property which was the subject matter of the Eradication Effort. The Director of Public Works shall present a Resolution of Lien to the City Council, and upon passage and adoption thereof, shall cause a certified copy thereof to be recorded with the San Diego County Recorder's Office.

3. **Ease of Removal Provisions.**

a. **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.

b. **Condition Encroachment Permits.**

All encroachment permits issued by the City shall, among such other things, be conditioned on (1) the permittee shall apply an anti-graffiti material to the encroaching object of a type and nature that is acceptable to the City Manager, or his or her designee; (2) the immediate removal by the permittee of any graffiti; (3) the right of the City to remove graffiti or to paint the encroaching object; (4) providing City with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of encroaching object containing graffiti.

c. **Condition 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, is approved:

- (1) Use of Anti-Graffiti Material. Developer shall apply an anti-graffiti material of a type and nature that is acceptable to the City Manager, or his or her designee, to such of the publicly-viewable surfaces on the improvements to be constructed on the site deemed by the City Manger, or designee, to be likely to attract graffiti ("Graffiti Attracting Surfaces");
- (2) 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; and,
- (3) Supply City with Graffiti-Removal Material. Developer shall, for a period of 2 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.
- (4) 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 of any graffiti placed thereon.

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 to consider prevention of graffiti, including, but not limited to the following: (a) use of a protective coating to provide for the effective and expeditious removal of graffiti; (b) use of additional lighting; (c) use of non-solid fencing; (d) use of landscaping designed to cover large expansive walls such as ivy or similar clinging vegetation; and (e) use of architectural design to break up long continuous walls or solid areas.

B. Retro-fit Existing Graffiti-attracting Surfaces; Non-Residential Structures. This may be incorporated in the Eradication Order during an abatement hearing.

1. At Owner's Expense. Any surface of a structure on a parcel of land placed in any land use other than residential which has been defaced with graffiti more than 5 times in 12 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 three times the cost of one year's expense to the property owner of graffiti removal.
2. At City's Cost. The owner of property on which is located a surface of a structure other than

residential which has been defaced with graffiti more than 5 times in 12 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.

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 eighteen to possess a Graffiti Implement shall be personally liable for any and all costs to any person 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.

9.20.070 Severability.

If any section, subsection, 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 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.

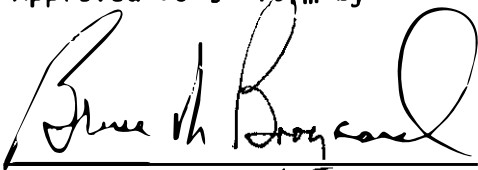
SECTION 2. This ordinance shall be in full force and take effect thirty (30) days from the passage and adoption hereof.

Presented by



John Lippitt
Director of Public Works

Approved as to form by



Bruce M. Boogaard
City Attorney

PASSED, APPROVED and ADOPTED by the City Council of the City of Chula Vista, California, this 3rd day of March, 1992, by the following vote:

AYES: Councilmembers: Grasser Horton, Malcolm, Moore,
Rindone, Nader

NOES: Councilmembers: None

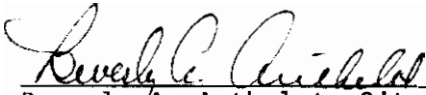
ABSENT: Councilmembers: None

ABSTAIN: Councilmembers: None



Tim Nader, Mayor

ATTEST:

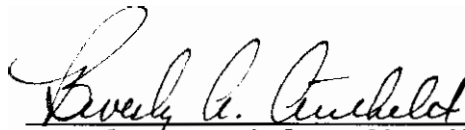


Beverly A. Authelet, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, Beverly A. Authelet, City Clerk of the City of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2496 had its first reading on February 25, 1992, and its second reading and adoption at a regular meeting of said City Council held on the 3rd day of March, 1992.

Executed this 3rd day of March, 1992.



Beverly A. Authelet, City Clerk