

Chapter 9.60**GRAFFITI PROHIBITION AND REMOVAL (ORD. 97-20)****9.60.010 Purpose and Intent.**

A. The City Council of Encinitas specifically finds that graffiti on public or private property is a blighting factor which not only depreciates the value of property which has been the target of such vandalism but also depreciates the value of adjacent and surrounding properties so as to create a negative impact upon the entire City.

B. The City Council finds and determines that graffiti is obnoxious and a public nuisance.

C. It is the purpose and intent of the City Council, through adoption of this Chapter, to provide additional enforcement tools to protect public and private property from acts of vandalism and defacement from the application of graffiti to privately and publicly owned property.

9.60.020 Definitions.

As used in this chapter, the following terms shall have the following meaning:

A. "Graffiti" means any unauthorized inscription, word, figure, painting, or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, stuck-on, engraved on or otherwise affixed to or on any surface, regardless of the nature of the material of that structural component, to the extent the same was not authorized in advance by the owner thereof, or despite advance authorization, is deemed by the City Council to be a public nuisance.

9.60.030 Graffiti Prohibited

A. It is unlawful for any person to paint, spray, chalk, etch, or otherwise apply graffiti on public or privately owned buildings, signs, walls, permanent structures, or places or other surfaces located on public or privately owned property within the city.

B. It is unlawful for any person owning or otherwise in control of any real property within the city to permit or allow any graffiti to be placed upon or to remain on any permanent structure located on the property when graffiti is visible from the street or public or private property.

9.60.040 Declaration of nuisance. The existence of graffiti within the city limits of the city is a public nuisance, and may be abated according to the provisions and procedures herein contained, or by any other method established by law for the abatement of public nuisances.

9.60.050 Right of City to require 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.

9.60.060 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, in addition to any other available remedy, be abated at the expense of the property owner upon order by the City Council by minor modifications thereto, or to the immediate area surrounding same, or by retrofitting said surface or surfaces with a graffiti resistant surface, or with such other features or qualities as may be established by the City Council as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof.

9.60.070 Right of City to remove.

A. 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. This section shall not be construed as creating a mandatory duty of the city.

B. Securing Owner Consent. Prior to entering upon private property or property owned by a public entity or 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.

C. 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 of this section, the city shall commence abatement and cost recovery proceedings for the removal of the graffiti according to the following procedure.

D. 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 ten (10) day 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 parties 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 on 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 may be appealed to the City Council in accordance with the provisions set forth in Chapter 1.12 of the Encinitas Municipal Code. 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 five (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 responsible 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, 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 area 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 thirty (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 council members.

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 Code 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. A resolution of lien by the city council shall upon adoption, cause a certified copy thereof to be recorded with the San Diego County Recorder’s Office.

9.60.080 Penalties for Violation. Any and all violations of this chapter shall be punishable as an infraction or a misdemeanor, at the discretion of the City, and, by the performance of community service in the form of graffiti clean-up to the maximum extent permitted by California Penal Code Section 594.6 and/or other provision of law.

9.60.090 Civil liability of parents. Any parent or legal guardian, whose child under the age of 18 unlawfully applies graffiti, shall be personally liable for any and all costs to any person incurred in connection with the removal of graffiti caused by said child, and for all attorney’s fees and court costs incurred in connection with the civil prosecution of any claim for damages.

9.60.110 Civil remedies available. A violation of any of the provisions of this Ordinance shall constitute a nuisance and may be abated by the City through civil process by means of restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisance.

9.60.120 Servability. 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.