

ORDINANCE NO. 1000

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER AMENDING TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE LANCASTER MUNICIPAL CODE BY AMENDING CHAPTER 9.24 (GRAFFITI), RELATING TO THE ABATEMENT OF GRAFFITI AND RECOVERY OF THE CITY'S COSTS OF GRAFFITI ABATEMENT, AND ADOPTING A "GRAFFITI ABATEMENT COSTS AND EXPENSES" COST MODEL

WHEREAS, Government Code Sections 38771 et seq. authorize a city to provide for the summary abatement of any nuisance resulting from the defacement of property by graffiti, and to collect its abatement and related administrative costs incurred in such abatement through the recordation of a nuisance abatement lien or a special assessment; and

WHEREAS, in 1995, the City Council of the City of Lancaster adopted Ordinance 678 relating to graffiti, codified at Chapter 9.24 of the Lancaster Municipal Code, which in part provides for City abatement of graffiti on private and public real property under certain circumstances; and

WHEREAS, the California Supreme Court, in *Luis M. v. Superior Court of Los Angeles County*, found that while the City of Lancaster may elect to have the probation officer of the County recover its graffiti abatement costs through juvenile court proceedings, it must first adopt an ordinance to authorize this action, in accordance with Welfare & Institutions Code Sections 742.10 et seq.; and

WHEREAS, in response to the *Luis M.* decision, it is the express intent of the City Council to authorize the City of Lancaster to recover its graffiti abatement costs through juvenile court proceedings as set forth in the Welfare & Institutions Code; and

WHEREAS, the City Council believes that the City should avail itself of all remedies to recover its costs associated with the abatement of graffiti;

THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Lancaster hereby finds and determines that the above recitals are true and correct.

SECTION 2: Chapter 9.24 of the Lancaster Municipal Code is hereby repealed; provided, however, that such repeal shall not affect or excuse any violation of said Chapter occurring prior to the effective date of this ordinance. A new Chapter 9.24 of the Lancaster Municipal Code is hereby added as follows:

9.24.010 Title.

This chapter shall be known as the city of Lancaster's Graffiti ordinance.

9.24.020 Findings and purpose.

The City Council finds and declares as follows:

A. Graffiti on public or private property is a condition of blight that not only depreciates the value of property which has been the target of such vandalism, but also depreciates the value of the adjacent and surrounding properties so as to create a negative impact upon the entire community.

B. Graffiti has also been found to be associated with criminal activity and delinquency. It is also a means of identification and intimidation utilized by gangs and its presence may further gang-related activities. The power of graffiti to create fear within the community and blight upon the landscape, devaluing property and detracting from a sense of community enjoyed by the residents of the city goes beyond the cost of clean-up or removal. Not only is graffiti a criminal act of vandalism, but it is also a social crime upon the quality of life and freedom from intimidation that residents desire in their neighborhoods.

C. California Government Code § 53069.3 authorizes the city to provide for the use of city funds to remove graffiti and other inscribed materials from publicly or privately owned real or personal property. California Government Code §38772 provides for the summary abatement by the city of a nuisance resulting from the defacement of property of another by graffiti, at the expense of the minor or other person creating or causing the nuisance. Unless the city causes graffiti to be removed from public and private property, it tends to remain. Other properties then become the target of graffiti with the result that the entire neighborhood is affected and becomes a less desirable place in which to be.

D. It is the intent and purpose of the City Council, through the adoption of this ordinance, to provide for the use of all enforcement tools authorized under law to protect public and private property from acts of vandalism and defacement. It is further the intent and purpose of the City Council to authorize the city to utilize all available remedies to recover its costs associated with the removal of graffiti and the identification and apprehension of persons responsible for creating, causing and/or committing such vandalism and defacement.

9.24.030 Definitions.

For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them in this section:

“Aerosol paint container” shall mean any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint, undercoating, spray insulation, or other substance capable of defacing property.

“City agents” shall mean city employees, representatives, or contract agents.

“City Manager” shall mean the City Manager of Lancaster and/or the person(s) designated by the City Manager to administer and enforce the provisions of this chapter.

“Enforcement officer” shall mean any official authorized to enforce the provisions of this chapter, including, but not limited to, law enforcement, public safety and code enforcement personnel, as well as any other city employee or contract agent authorized by the city to abate graffiti nuisances described in this chapter.

“Felt-tip marker” shall mean any indelible marker or similar implement with a tip which, at its broadest width, is greater than one-eighth of an inch and which contains an ink or other pigmented liquid.

“Graffiti” shall mean any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, painted, applied or engraved on or otherwise glued, posted, or affixed to or on any surface of any public or private real or personal property located within the city to the extent that the same was not authorized in advance by the owner or occupant thereof.

“Graffiti implement” shall mean an aerosol paint container, a felt tip marker, gum label, paint stick, etching tool capable of scarring glass, metal, concrete, wood, adhesive label or any other surface. “Graffiti implement” shall also include any other device capable of being used to leave a visible mark at least one-sixteenth of an inch (1/16”) in width upon any surface of any material.

“Minor” shall mean a person under the age of eighteen years.

“Paint stick” shall mean a device containing a solid form of paint, chalk, wax, epoxy, or 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.

“Responsible party” shall mean any and/or all of the following:

1. Any person, of any age, who has been determined to have placed, applied, installed or otherwise created, caused or committed graffiti on public or private real or personal property of another.

2. A minor who has confessed to, admitted to, or pled guilty or nolo contendere to a violation of Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code, or a minor convicted by final judgment of a violation of Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code, or a minor declared a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code by reason of the commission of an act prohibited by Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code.

3. A parent or guardian having custody and control of a minor who is a responsible party, as defined in this section.

4. Any person who owns, possesses, occupies, or otherwise has responsibility for the repair or maintenance of personal or real property on which there exists graffiti.

“Structure” shall mean any structure as defined in the city's building code, and shall include, but not be limited to, buildings, walls, fences, sidewalks, curbs, poles and signs.

9.24.040 Graffiti declared a public nuisance.

Graffiti on public or private property is a condition of blight that not only depreciates the value of property which has been the target of such vandalism, but also depreciates the value of the adjacent and surrounding properties so as to create a negative impact. Pursuant to California Government Code §38771, the City Council hereby declares that the presence of graffiti on any surface of a structure, sidewalk, curb, vehicle, tree, shrub, rock or tangible item, or on any portion of publicly or privately owned real or personal property constitutes a public nuisance.

9.24.050 Prohibition against maintenance of graffiti.

A. It shall be unlawful for any person to maintain, cause, place, apply or permit the maintenance, placement or application of any graffiti on any surface of a structure, sidewalk, curb, vehicle, tree, shrub, rock or other tangible item, which is visible from publicly or privately owned real property, public street, sidewalk, alley, or other public right-of-way or area open to the public.

B. In the event the owner or manager or person in control of property where graffiti has been found fails to provide consent for the city to enter upon the property for the purpose of removing graffiti in accordance with this chapter, the property owner or manager or person in control shall remove the graffiti at private expense within twenty-four (24) hours of receipt of written or verbal notification by the city of the obligation to do so. No owner, manager or person in control of property shall permit graffiti to remain affixed to such property for a period in excess of twenty-four (24) hours after receipt of such notification.

C. The City Council declares that a violation of this section is a public nuisance which is subject to abatement pursuant to the abatement provisions set forth in chapter 8.28 of this code.

9.24.060 Appropriation of funds.

The city may appropriate money from other funds to use to remove graffiti from publicly or privately owned real or personal property, and to replace or repair publicly or privately owned property that has been defaced with graffiti that cannot be removed cost effectively, pursuant to the procedures set forth in section 9.24.070.

9.24.070 Use of city funds to repair damages caused by graffiti.

A. The city may use funds appropriated pursuant to Section 9.24.060 to remove graffiti from publicly or privately owned real or personal property, and to replace or repair publicly or privately owned property that has been defaced with graffiti that cannot be removed cost effectively. This section authorizes only the removal of the graffiti itself, or, if the graffiti cannot be removed cost effectively, the repair or replacement of that portion of the property that was defaced; it does not authorize the painting, repair or replacement of other parts of the property that were not defaced. Such removal, repair or replacement may only be performed in accordance with the provisions of this chapter and/or chapter 8.28 of this code.

B. The local law enforcement agency may promulgate procedures for pre-removal preservation of sufficient evidence of the graffiti for criminal prosecutions pursuant to Section 602 of the Welfare and Institutions Code pertaining to the person(s) who created, caused or committed the graffiti.

9.24.080 Abatement of graffiti by city.

The City Manager, or his or her designee, is authorized to summarily abate a public nuisance caused by the presence of graffiti, pursuant to the following conditions:

A. In abating the public nuisance from public property owned or leased by the city, the painting, repair, and/or replacement of an area more extensive than where the graffiti is located shall not be authorized, except where the City Manager, or his or her designee, determines that a more extensive area must be repainted, repaired, and/or replaced.

B. Where the structure or surface is owned by a public entity other than the city, the removal of graffiti by city agents may be performed only after securing the consent of the public entity having jurisdiction over the structure or surface. In abating the public nuisance from a structure or property owned by another public entity, the painting, repair, and/or replacement of an area more extensive than where the graffiti is located shall not be authorized, except where (i) the City Manager, or his or her designee, determines that a more extensive area must be repainted, repaired, and/or replaced in order to avoid aesthetic disfigurement to the neighborhood or community; or (ii) the other public entity agrees in writing to pay for the costs of repainting, repairing, and/or replacing a more extensive area.

C. Where the structure or surface is privately owned, the removal of graffiti by city agents may be performed only after securing the written consent of the owner or possessor. In abating the public nuisance from a structure or property owned by a private party, the painting, repair, and/or replacement of an area more extensive than where the graffiti is located shall not be authorized, except where (i) the City Manager, or his or her designee, determines that a more extensive area must be repainted, repaired, and/or replaced in order to avoid aesthetic disfigurement to the neighborhood or community; or (ii) a responsible party agrees in writing to pay for the costs of repainting, repairing, and/or replacing a more extensive area.

D. As an alternative to the procedures provided in this section, enforcement officers shall have the authority to cause the abatement and removal of graffiti in accordance with the procedures set forth in chapter 8.28 of this code, and may utilize the cost recovery procedures set forth therein.

9.24.090 Costs of abatement by city; liability.

A. For purposes of this section 9.24.090 and sections 9.24.100 and 9.24.110, “abatement and related administrative costs” include, but is not limited to, court costs, attorney’s fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, costs of administering and monitoring the participation of a defendant and his or her parents in a graffiti abatement program, and the law enforcement costs incurred by the city in identifying and apprehending the person who created, caused or committed the graffiti.

B. City abatement of a graffiti nuisance shall be at the expense of the person who created, caused or committed the nuisance. The city may recover its abatement and related administrative costs incurred in abatement of graffiti in accordance with sections 9.24.100 and 9.24.110 of this chapter.

C. All responsible parties, as defined in this chapter, for graffiti at or on a particular property shall be jointly and severally liable for graffiti nuisance abatement and related administrative costs.

9.24.100 Graffiti nuisance abatement lien.

A. The city may make the expense of a graffiti nuisance abatement a lien against real property owned by the minor or other person who created, caused or committed the graffiti, and may further make such expense a personal obligation against the minor or other person.

B. The parent or guardian having custody and control of a minor described in subdivision A of this section shall be jointly and severally liable with the minor. The city may make the expense of abatement a lien against real property owned by a parent or guardian having custody and control of the minor.

C. Prior to the recordation of a lien against real property owned by a person who caused, created or committed the graffiti nuisance, or property owned by that person's parent or guardian, if applicable, the city shall notify the person of that fact. Such notice shall describe the parcel of property which is to be subject to the lien, state the amount which the person, parent or guardian is required to pay pursuant to this chapter and indicate that unless payment is received by the city within thirty (30) days of the date of the notice, the lien shall be recorded against the described real property.

D. The notice required by this section shall be personally served upon the minor or other person who caused, created or committed the graffiti nuisance, or the minor's parent or legal guardian. If personal service cannot be made after diligent search, the notice may be posted in a conspicuous place on the property where city abatement occurred and published in a newspaper of general circulation in the city for a period of ten (10) days.

E. If the person parent or guardian to whom notice has been given has not paid the amount set forth in the notice required by this section within thirty (30) days of the date of the notice or within thirty (30) days of completion of the publication of the notice, the city may record the nuisance abatement lien against the parcel of property described in the notice.

F. The nuisance abatement lien authorized by this section shall specify the amount of the lien, the fact that it is recorded on behalf of the city, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed and the name and address of the record owner of the parcel.

G. The nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located unless payment is received as set forth in subsection E of this section.

H. If the nuisance abatement lien is discharged, released or satisfied, through payment of foreclosure, notice of discharge containing the information specified in subsection F of this section shall be recorded.

I. The city may bring a foreclosure action to satisfy the nuisance abatement lien.

9.24.110 Special assessment for graffiti nuisance abatement.

A. As an alternative to the procedure set forth in section 9.24.100, the city may make the expense of a graffiti nuisance abatement a special assessment against a parcel of land owned by the minor or other person who created, caused or committed the graffiti nuisance or by the parent or guardian having custody and control of the minor.

B. Prior to levying a special assessment against property owned by a person who created, caused or committed the graffiti nuisance, or that person's parent or guardian, if applicable, the city shall notify the person of that fact. Such notice shall describe the parcel of property which is to be subject to the special assessment, state the amount which the person, parent or guardian is required to pay pursuant to this chapter, and indicate that unless payment is received by the city within thirty (30) days of the date of the notice, the special assessment shall be levied against the described real property. The notice will also specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments.

C. The notice required by this section may be served by personal service or by certified mail upon the person, parent or guardian. The failure of such person to receive notice shall not invalidate any action or proceeding pursuant to this section.

D. If the person, parent or guardian to whom notice has been given has not paid the amount set forth in the notice required by this section within thirty (30) days of the date of the notice or within thirty (30) days of completion of the publication of the notice, the city may levy the special assessment against the property identified in the notice. Notices or instruments relating to the abatement and/or special assessment may be recorded.

E. The city may conduct a sale of vacant residential developed property for which the payment of a special assessment, levied pursuant to this section, is delinquent, in accordance with applicable state law.

9.24.120 Violations; penalties.

A. It is unlawful for any person to violate any provision or fail to comply with any requirement of this chapter. Each day or portion thereof that a violation occurs or is present constitutes a separate offense. Any person in violation of this chapter is subject to the penalty provisions set forth in chapter 1.12 of this code.

B. Any person who violates any provision or fails to comply with any requirement of this chapter shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000.00) for each violation. The civil penalty prescribed may be sought in addition to any other remedy. The city is authorized to seek recovery by any means authorized by law. The parent or legal guardian having custody and control of a minor offender shall be jointly and severally liable with the minor.

C. Any graffiti created, caused or committed by a minor that results in the defacement of publicly or privately owned real or personal property shall be attributed to each parent or guardian having custody and control of the minor for all purposes of civil damages, including court costs and attorney's fees, to the prevailing party, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from said graffiti, in an amount not to exceed thirty-nine thousand three hundred dollars (\$39,300.00), or any amount as may be adjusted by the California Judicial Council, pursuant to and in accordance with California Civil Code section 1714.1.

D. Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that any of the following persons is responsible for graffiti that may be abated as a nuisance in accordance with the provisions of section 9.24.080 or chapter 8.28 of this code, the court may order such person to pay treble the costs of the abatement: (i) an owner of property; (ii) a minor who has confessed to, admitted to, or pled guilty or nolo contendere to a violation of Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code; (iii) a minor convicted by final judgment of a violation of Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code; or (iv) a minor declared a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code by reason of the commission of an act prohibited by Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code.

E. The following additional penalties may also be imposed:

1. Suspension or delay of issuance of a driver's license upon a conviction for graffiti/vandalism which was committed while the offender was thirteen (13) years of age or older, pursuant to California Vehicle Code Section 13202.6;

2. Performance of community service, including graffiti removal service, by a minor determined to be a ward of the court as a result of committing a graffiti/vandalism offense in the city, pursuant to Welfare and Institutions Code Section 727.5;

3. When a person has been convicted of creating, causing or committing graffiti or of possessing a destructive implement with intent to commit graffiti, and the offense was committed when the person was under the age of eighteen (18) years, in lieu of community service such person and his or her parent or guardian may be ordered to keep a specified property in the city free of graffiti for at least sixty (60) days, pursuant to Penal Code Section 594.8.

9.24.130 Collection of abatement costs through the juvenile court

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

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" means:

- i. The average law enforcement costs per unit of measure incurred in identifying and apprehending a minor; and
- ii. The average cost per unit of measure incurred by the city in removing graffiti; and
- iii. 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. Cost findings shall be reviewed at least once every three years to ensure their adequacy. Recommendations shall be made to the City Council regarding any appropriate updates to the amounts of graffiti abatement costs and expenses. City Council may adopt updated cost findings by resolution. Immediately after adoption, the City Clerk shall forward a certified copy of the adopted cost findings to the clerk of the Los Angeles County juvenile court and the Los Angeles County probation officer.

C. The Los Angeles County probation officer is 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.

D. Upon the request of the probation officer, the city shall promptly transmit to the probation officer data about the city's expenditure of resources for graffiti abatement in a particular case, for collection pursuant to this part. That data shall be sufficient to enable the probation officer and the juvenile court to calculate the costs to the city for that particular graffiti abatement.

9.24.140 Conditions to issuance of city permits and approvals.

A. In approving tentative or parcel maps, subdivision maps, conditional use permits, variances, planning director's review approval, or other discretionary land use entitlements, the city may consider imposing conditions reasonably related to the control of graffiti or the mitigation of the impacts of graffiti, or both. Such conditions may include, without limitation, any or all of the following:

1. Requiring the installation and use of city-approved anti-graffiti materials on surfaces which are likely to be graffiti attracting surfaces;
2. Requiring the installation and use of landscaping to screen or provide a barrier to surfaces which are prone to graffiti or likely to be a graffiti attracting surface;
3. Requiring the installation and use of additional lighting to areas that are likely to be graffiti attracting surfaces and areas adjacent thereto;
4. Requiring the owner, developer or other applicant to immediately remove any graffiti, to the city's satisfaction;
5. Requiring the owner, developer or other applicant to grant to the city, in writing, the right of entry onto the property and to remove graffiti on any structure, surface or portion of the premises;
6. Requiring the owner, developer or other applicant to supply the city with sufficient matching paint and/or anti-graffiti material on demand for use in the abatement of graffiti by city agents.

9.24.150 Retail display of graffiti implements.

Every person who owns, conducts, operates or manages a retail commercial establishment selling graffiti implements, containing anything other than a solution which can be removed with water after it dries, shall store or cause such graffiti implements to be stored in an area that may be viewable by but is not accessible to the public in the regular course of business without employee assistance, pending the lawful sale or disposition of each graffiti implement.

9.24.160 Reward for information.

The city may offer and pay rewards for information leading to the identification, apprehension and conviction of any person who willfully or maliciously damages or destroys any real or personal property within the city. Rewards shall be in an amount established by resolution of the City Council. Eligibility for rewards shall be determined by the City Council following receipt of a report from city personnel indicating that information was received which led to the arrest and conviction of a person for willful or malicious damage to or destruction of public or private property within the city, and indicating the final disposition of such matter. No law enforcement officers, municipal officers or employees of the city shall be eligible for such reward.

9.24.170 Liability for amount of rewards.

Any person who is adjudicated guilty of willful or malicious destruction of or damage to property shall be liable to the city for the amount of any reward paid pursuant to this chapter. If such person is a minor who is unable to pay such amount, the parent or legal guardian of that minor shall be liable for such amount.

9.24.180 Remedies not exclusive.

The abatement of graffiti or the assessment of civil penalties against a responsible person shall not prejudice or adversely affect any other civil, administrative or criminal action that may be brought relating to a graffiti nuisance. A civil or criminal action may be brought concurrently with any other process regarding the same violation. Disposition of a criminal prosecution relating to a graffiti nuisance does not preclude the city from seeking full cost recovery as provided herein.

SECTION 3. The City Council hereby adopts the graffiti abatement costs and expenses as set forth in the cost model attached hereto as Exhibit A and incorporated by reference herein.

SECTION 4. That the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

I, Britt Avrit, CMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading on the 12th day of November, 2014, and placed upon its second reading and adoption at a regular meeting of the City Council on the _____ day of _____, 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

BRITT AVRIT, CMC
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF LANCASTER)

CERTIFICATION OF ORDINANCE
CITY COUNCIL

I, _____, _____ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. 1000, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)