
C O U N C I L C O M M U N I C A T I O N

TO: THE CITY COUNCIL
FROM: THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE
NOVEMBER 28, 1990

SUBJECT: CONSIDERATION OF INTRODUCTION OF GRAFFITI ORDINANCE

PREPARED BY: City Attorney

RECOMMENDED ACTION: Council consideration of introduction of
proposed graffiti ordinance.

BACKGROUND INFORMATION: At the shirtsleeve session of November 13, 1990, the City Council considered two versions of an ordinance dealing with graffiti. The first was based on voluntary cooperation by the owner or responsible person, and did not compel graffiti abatement. The second version allowed the City to compel graffiti removal and if necessary, to lien the property for costs of abatement. From input by Council members and staff, it appears that the preferred option at present is the non-mandatory version.

The ordinances were evaluated and discussed by the Mayor's informal committee, comprised of concerned citizen Arthur Price, Council member Evelyn Olson, Public Works Director Jack Ronsko, and the City Attorney. The consensus was that the ordinance providing for mandatory removal of graffiti was probably not cost-effective at present, because in many cases, it might actually cost more to process the necessary paperwork than the actual cost of abating the graffiti. The paperwork would have been necessary, however, if a lien was going to be used to cover abatement costs. For those reasons, the voluntary ordinance appears preferable.

The attached ordinance allows Public Works to abate graffiti at no cost to the property owner, but does not provide for painting any area larger than that necessary just to cover up the graffiti. It also makes no guarantees as to a color match.

In addition to the abatement provisions of this ordinance, it would make illegal the placing of any unauthorized graffiti on a public or privately-owned building or structure, and would also prohibit the sale or furnishing to persons under 18 years of age any pressurized paint can or felt tip pen with a tip more than 1/2 inch wide. Possession of such spray paint or marking pen by any person would also be prohibited in publicly-owned parks, playgrounds or recreational facilities in the City, subject to certain specified exemptions.

The ordinance would place the burden on businesses which sell such paint and marking pens to get proof of age from some potential buyers. However, State law already requires that sellers of such items get proof of age before selling airplane glue or paint which contains certain substances such as toluene. There are also a number of cities in California that have adopted similar restrictions on sale of paint to minors, and no evidence of this creating major problems for businesses has been noted.

It has also been proposed that in conjunction with the possible adoption of a graffiti ordinance, that the City undertake an information campaign making people aware of the graffiti cleanup program. Businesses and property owners would be urged to set aside some **touchup** paint when buildings are repainted. Then, should it be necessary for City crews to assist in abating graffiti, the owner's paint could be used assuring a color match.

If the Council desires to put this ordinance in place, a **consent/hold** harmless form would be prepared by the City Attorney's office. This form would be required before the City would do any graffiti abatement work.

Some **community** organizations have already expressed an interest in helping with this program.

Respectfully submitted,



BOB McNATT
City Attorney

BM:vc

ORDINANCE NO. 1502

AN ORDINANCE OF THE LODI CITY COUNCIL
ADDING CHAPTER-9.28 TO THE LODI MUNICIPAL CODE
RELATING TO GRAFFITI ABATEMENT

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Chapter 9.28, Graffiti Abatement, **is** hereby added to the Lodi Municipal Code to read **as** follows:

Chapter 9.28
GRAFFITI ABATEMENT

9.28.010 FINDINGS.

The City Council finds that graffiti on public and private property contributes to the creation of blight, negatively affects the value of surrounding property, visually detracts from neighborhoods and generally lowers the quality of life in the City. The Council further finds that graffiti is often related to the activities or territories of street gangs and its presence encourages proliferation of additional **graffiti** unless abated **promptly**. To promote the health, safety and welfare of the public, this ordinance is adopted to alleviate vandalism and halt the spread of such nuisances.

9.28.020 DEFINITIONS.

1. "Graffiti" means the unauthorized placing upon any public or private building, fence, structure or other property of any **message**, words, letters, pictures, **symbols** or other marking **by**

scratching, carving, the spraying of paint, or the use of chalk, dye or other similar substance.

2. "Responsible party" means the owner, manager, or person in lawful possession of property upon which graffiti has been placed.
3. "Unauthorized" means without the explicit consent of the owner or person in possession of or responsible party for the affected private property or the public official responsible for public property, to any act described in this ordinance.

9.28.030 GRAFFITI PROHIBITED.

It shall be unlawful for any person to scratch, carve, paint, chalk or otherwise apply any unauthorized graffiti on any public or privately-owned building, fence, structure or other property.

9.28.040 REMOVAL OF GRAFFITI.

When graffiti or other inscribed material is capable of being viewed from a public **right** of way or any place the public has a right to be, and the responsible party consents thereto or requests the cooperation of **the** City, the Public Works Director may provide for the removal of such graffiti. **If** the Director provides for such removal, he or she shall not authorize nor undertake to provide for the painting or repair of any more extensive area than that necessary to cover the graffiti. Prior to graffiti abatement **by** the Public Works Department, the responsible party shall be required to execute a written release,

holding the City harmless and acknowledging that the covering paint may not match the color of the structure upon which it is placed.

SECTION 9.28.050 SALE OR POSSESSION OF PRESSURIZED PAINT CANS.

It shall be unlawful in the City of Lodi for any person to sell, give, loan, exchange, or cause or permit to be sold, given, loaned or exchanged any pressurized can(s) containing any substance commonly known as paint or dye to any person under the age of eighteen (18) years, unless such person is the parent or legal guardian of such minor. No person under the age of eighteen (18) years shall purchase any pressurized can(s) containing paint or dye.

9.28.060 SALE OR POSSESSION OF MARKING PENS.

It shall be unlawful in the City of Lodi for any person to sell, give, loan, exchange, or cause or permit to be sold, given, loaned or exchanged any marking pen(s) with a tip more than one-half inch (1/2") wide to any person under the age of eighteen (18) years, unless such person is the parent or legal guardian of such minor. For purposes of this section, a marking pen is defined as any instrument for writing or marking containing ink or other colored material with a felt or cloth composition tip. No person under the age of eighteen (18) years shall purchase any marking pen(s) with a tip more than one-half inch (1/2") wide.

9.28.070 POSSESSION OF SPRAY PAINT OR MARKING PEN IN PUBLIC PARK,
SQUARE, PLAYGROUND, SWIMMING POOL OR RECREATIONAL FACILITY.

No person shall have in his or her possession any pressurized can(s) containing paint or dye, nor any marking pen(s) as defined in this chapter with a tip more than one-half inch (1/2") wide, while in any City-owned public park, square, playground, swimming pool or recreational facility of the City.

9.28.080 EXEMPTIONS .

The provisions of this chapter regulating the sale, furnishing or possession of spray paint and marking pens shall not apply to:

- (a) authorized employees of the City of Lodi;
- (b) persons or firms under contract with the City while engaged in authorized activities under such contract;
- (c) employees or agents of a firm or business utilizing such items in the normal course of business, while actually engaged in such employment activities.

9.28.090 PENALTY.

A violation of this chapter shall be an infraction, punishable by a fine not exceeding five hundred dollars.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and

published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this day of

JOHN R. SNIDER
Mayor of the City of Lodi

ATTEST:

ALICE M. REIMCHE
City Clerk of the City of Lodi

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State **of** California
County of San Joaquin, **ss.**

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1502 was introduced at a regular meeting of the City Council of the City of Lodi held November 28, 1990 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____ by the following vote:

- Ayes : Council Members -
- Noes : Council Members -
- Absent: Council Members -
- Abstain: Council Members -

I further certify that Ordinance No. 1502 was approved and signed by the Mayor **on** the date of its passage and the same has been published pursuant to law.

ALICE M. REIMCHE
City Clerk of the City of Lodi

Approved as to Form

BOBBY W. McNATT
City Attorney of the City of Lodi

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