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REPORT TO THE PUBLIC SAFETY AND
NEIGHBORHOOD SERVICES COMMITTEE

PROPOSED AMENDMENTS TO THE GRAFFITI ABATEMENT ORDINANCE

INTRODUCTION

Graffiti continues to be a widespread problem throughout San Diego. It is found in all areas of our city, appearing in more and more places. Graffiti vandals have become more sophisticated. No longer limited to spray painting, graffiti vandals now deface property with posters and stickers. The result is a blight on our communities, as posters and stickers deface ever more vacant buildings, public rights-of way, utility boxes, and fences.

Graffiti vandals are prosecuted under the Penal Code vandalism statute. They face tougher sentences today because our state legislators have stiffened the penalties for graffiti. San Diego Municipal Code sections 54.0401 through 54.0412 allow the City to abate graffiti visible from public property, when property owners fail to voluntarily remove the graffiti. But we do not have all the tools we need.

In the past year, the City has received increasing numbers of complaints about posters and stickers put on private and public property. Usually the complaints are about posters and stickers that depict faces or graphics. The medium has become known as “guerilla art.” Guerilla art vandals are sophisticated at avoiding detection, often driving down from Los Angeles in rental cars to place this “art” in our City. Without strong enforcement tools, law enforcement is losing its battle against the proliferation of posters and stickers throughout our City.

Our graffiti abatement ordinance is outdated. It limits “graffiti” to “the spraying . . . or marking of paint, ink, chalk, dye or other similar substances.” This limitation does not allow the City to address the new forms of graffiti that are glued, posted, or affixed to public or private property, namely posters and stickers. I propose that the City Council amend the graffiti abatement ordinance to update and strengthen it. Our City needs the means to effectively fight the blight of guerilla art in our neighborhoods.

PROPOSED ORDINANCE AMENDMENTS

A. ***Make it illegal under the Municipal Code to place graffiti art posters or stickers on public or private property, thus closing enforcement loopholes present in the Penal Code and the Municipal Code.***

The Police Department and the City Attorney's Office rely on Penal Code section 594 (vandalism) to prosecute graffiti vandals. Defacing property with posters or stickers, however, cannot be charged as graffiti vandalism. The Penal Code defines graffiti as "any unauthorized inscription, word, figure, mark or design that is written, marked, etched, scratched, drawn, or painted on real or personal property." Neither posters nor stickers fall within this definition of graffiti. Putting up posters and stickers can only be charged as acts of vandalism if the posters or stickers physically damage the property on which they are placed. In many instances, there is no physical damage caused by affixing posters or stickers, for example, when the glue does not set because the posters or stickers are immediately removed.

The Council should amend Municipal Code section 54.0405 to prohibit acts of guerilla art. Our ordinance would differ from the Penal Code vandalism statute in that it would define graffiti more broadly, to include posters and stickers. Such an ordinance would close a loophole that prevents us from charging many graffiti art vandals.

B. ***Amend the graffiti abatement ordinance so that posters on public property and in the right-of-way can be removed by the City.***

Under Municipal Code section 142.1206, only "signs" can be removed from public property or rights-of-way by the City. Signs "direct attention to a product, place, activity, person, institution, business or solicitation." Because graffiti posters and stickers are not signs, City crews cannot remove them. We need to amend the graffiti abatement procedures to authorize City crews to remove graffiti vandals' posters and stickers.

C. ***Amend Municipal Code section 54.0407 to expand the areas where graffiti may be abated on private property.***

The Municipal Code authorizes the City to abate graffiti on private property when the graffiti is located on "buildings, fences, structures and similar places." Today graffiti is found in almost every imaginable place: trees, poles, lampposts, etc. Limiting abatement to buildings, fences, structures, and similar places is now overly restrictive. To meet the challenge posed by graffiti vandals, we must amend the Municipal Code so the City can abate graffiti on "real property and its appurtenances." The City needs such a tool if we are to eradicate the blight of graffiti in our neighborhoods.

D. ***Amend the City's Spray and Pay program, Municipal Code section 54.0413, to allow citizens to be rewarded for reporting graffiti vandalism, whether or not the graffiti causes property damage.***

The Spray and Pay Program was created in 1996 to pay a reward of up to $500 for information leading to the arrest and conviction of graffiti vandals. Convicted graffiti vandals pay, as part of their sentences, monies into this reward fund. Persons who report graffiti vandals may submit claims to the City, and on a case-by-case basis the amount of any reward is determined; this program is similar to the Crime Stoppers Anonymous Program. The City has to deny rewards to citizens who report vandals defacing property with posters or stickers. Until the Council amends the Municipal Code to (1) include posters and stickers in the definition of graffiti, and (2) eliminate property damage as an element of a claim for a Spray and Pay reward, the City must continue to deny some claims that otherwise merit rewards.

E. ***Amend Municipal Code section 54.0410 to allow under certain circumstances the City to recover the costs of abating graffiti.***

Most cities in California have laws to allow them under certain circumstances to recover from property owners the costs of removing graffiti from private property. Cities often provide for cost recovery when, for example, the property has been continually defaced, or the area to be abated is particularly large, or the owner is uncooperative and fails to take steps to prevent the recurrence of graffiti. Although the Municipal Code allows the City to recover the costs of abating other public nuisances, it does not provide for the recovery of the costs of abating graffiti. Clearly, like the City, private property owners are victims of graffiti, but it may be appropriate to recover costs from them when public funds are continually expended to improve their property. Staff from the Graffiti Control Program and the City Attorney's Office have drafted a cost recovery provision for the Council's review. If your committee finds that under certain circumstances the City ought to recover the costs of abating graffiti, we can bring forward an amendment to Municipal Code section 54.0410.

F. ***Amend Municipal Code section 54.0408 to require that property owners sign consent forms and liability waivers before the City will enter and abate graffiti nuisances on private property.***

The graffiti abatement ordinance provides that, "Property owners in the City of San Diego may consent in advance to the City's entry onto private property for Graffiti removal purposes. The Director will make forms for such consent available." To better protect the City, the City should not enter onto private property to abate graffiti nuisances unless the property owner consents and waives any liability claims. Such a requirement exists in a majority of cities in

California. We need to amend the ordinance to require consent and a liability waiver before the City enters and abates nuisances on private property.

G. ***Make other minor nonsubstantive amendments to the ordinance.***

When the Council amends the graffiti abatement ordinance, it should take the opportunity to do some nonsubstantive clean-up. My Office will bring forward some proposed revisions that would make the ordinance more clear and consistent with current Municipal Code drafting conventions.

CONCLUSION

The recent wave of "guerilla art" and the resulting proliferation of posters and stickers throughout our City deserves a strong, swift response. Adopting the proposed amendments will give law enforcement the necessary tools to more effectively combat graffiti vandals. These amendments will also strengthen the City's ability to remove graffiti from public and private property. Updating and strengthening the ordinance will put the City in a much better position to address the increasing blight of posters and stickers and properly respond to victims of graffiti.

Respectfully submitted,

/ S / (LJG for)

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Attachments
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