

September 21, 2006

Honorable Mayor and Members of  
the Hermosa Beach City Council

Regular Meeting of  
September 26, 2006

## GRAFFITI REMOVAL ORDINANCE

### Recommendation:

That the City Council adopt the attached ordinance amending the municipal code to add graffiti removal provisions, securing of aerosol cans, sale of aerosol cans to minors and possession of aerosol cans on city property, and setting up a reward program.

### Background:

Councilmember Bobko initiated a request to update and strengthen the City code concerning graffiti removal and the penalties for those convicted of this offense.

The research done by the City Attorney's office revealed that the penalties are already set forth in state law so there was not any need to restate them in a City ordinance. Persons arrested in connection with graffiti offense will continue to be charged under state law.

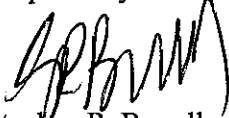
The proposed ordinance declares graffiti as a public nuisance and provides a process for City removal of graffiti from private property. The ordinance sets up a process to remove graffiti from private property with or without the consent of the property owner.

The proposed ordinance requires that aerosol spray cans and wide blade markers be secured so that access to these products are controlled by business personnel and not sold to anyone under the age of eighteen. In addition, a notice will be posted at appropriate locations indicating that pursuant to California Penal Code Section 594.1, no person shall carry any aerosol can of paint or wide blade marker into or upon any City-owned building, grounds, park or other City facility without permission.

The proposed ordinance also sets up a reward program. The reward amount would be set by a City Council resolution. Any reward paid under this provision could be sought from the person convicted for the graffiti in addition to any restitution.

The proposed ordinance would help staff in dealing with private property owners. In the past, we have directly contacted the property owner requesting their assistance and in most cases they have responded by removing the graffiti in a timely manner. This will allow us to move forward if the property owner is not able to move in a timely manner.

Respectfully submitted,



Stephen R. Burrell  
City Manager

**AN ORDINANCE OF THE CITY OF HERMOSA BEACH REGARDING GRAFFITI REMOVAL AND AMENDING THE HERMOSA BEACH MUNICIPAL CODE**

**The City Council of the City of Hermosa Beach Does Hereby Ordain as Follows:**

Section 1. Title 9 of the Hermosa Beach Municipal Code is amended by adding thereto a new Chapter 9.36 to read as follows:

**Chapter 9.36**

**Graffiti Removal**

**9.36.010 Short title.**

This chapter of the Hermosa Beach Municipal Code may be referred to as the "Graffiti Removal Ordinance" of the city.

**9.36.020 Purpose.**

The purpose of this chapter is to provide for the prompt abatement of graffiti from public and private properties in the city and to regulate the sale of materials used in acts of graffiti to minors.

**9.36.030 Definitions.**

For the purpose of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"Defacement" means the intentional altering of the physical shape or physical appearance of property without prior consent of the owner of the property.

"Graffiti" means any painting, marking, symbol, design, inscription or other defacement which is written, sprayed, painted, scratched, etched, engraved, or placed without the prior consent of the owner or person in possession thereof.

"Responsible adult" is a parent or guardian of an individual under eighteen (18) years of age and includes an agent of the parent or guardian, provided the agent is over the age of eighteen (18).

"Wide blade marker" means any marker, pen or similar implement which contains a fluid which is not soluble in water, or which cannot be removed with water after drying, and has a flat, pointed or angled writing surface of a width of four millimeters or greater.

#### **9.36.040 Declaration of graffiti as a public nuisance.**

The city council finds and declares that appearance of graffiti on public and private properties within public view is obnoxious and constitutes a public nuisance, the abatement of which shall be provided as set forth herein.

#### **9.36.050 Permitting graffiti to remain prohibited.**

No person shall permit any graffiti that may be viewed from the public right-of-way or other public property to remain on any building, structure, tree, shrub, sidewalk or curb owned or possessed by such person.

#### **9.36.060 Notice to owners or possessors of private property.**

Whenever the city manager, or his or her designee, determines that graffiti is being maintained upon the premises within the city in violation of Section 9.36.050 of this chapter, the city manager, or his or her designee, shall send written notice to the owner or possessor of the premises of such condition and shall require that the graffiti be removed. The notice and order shall be sent to the owner as shown on the most recent equalized assessment roll and a copy shall be posted on the subject property. The notice shall state that the owner must remove the graffiti or consent to its removal by the city within fourteen (14) days from the date the notice was mailed.

#### **9.36.070 Removal by City with owner consent.**

Whenever the city manager, or his or her designee, determines that graffiti is located on public or private property so that graffiti may be viewed by a person using any public right-of-way or other public property, the city manager, or his or her designee, is authorized to provide for and use public funds, if necessary, to remove graffiti by City crews or contractor upon the following conditions:

A. Public Property. Whenever the city manager or his or her designee determines that graffiti exists upon property owned by the city, it shall be removed as soon as possible. When the property is owned by a public entity other than the city, the removal of the graffiti is authorized after securing written consent of the public agency having jurisdiction over the property.

B. Private Property. Where the subject property is privately owned, the removal of graffiti is authorized after the city manager, or his or her designee, secures the written consent of the owner of the property and the owner executes a release and waiver approved as to form by the city attorney.

### **9.36.080 Removal by City without owner consent.**

A. The city manager may initiate proceedings to abate any graffiti maintained contrary to the provisions of this chapter without the consent of the owner only after the following has occurred:

1. The city manager has determined that graffiti within public view exists on particular premises in the city;
2. A notice of such condition has been sent to the property owner pursuant to Section 9.36.060; and
3. The property owner has failed to either remove the graffiti or consent to its removal by the city within the time period specified in the notice.

B. Prior to the city abating graffiti on private property without the consent of the owner, a hearing shall be conducted by the city manager or his or her designee serving as hearing officer, at which time the property owner shall be given an opportunity to be heard regarding the proposed abatement. A notice of the time, place and subject of the hearing before the city manager or his or her designee shall not less than ten (10) days prior to the hearing be sent personally or by first class United States mail to the owner's address as shown on the latest equalized tax assessment roll of the affected premises and shall be conspicuously posted on the affected premises. Proof of posting and serving of such notice shall be made by declaration under penalty of perjury filed with the hearing officer. The failure of any person to receive the notice shall not affect the validity of any proceedings under this chapter.

C. At the hearing, the hearing officer shall receive and consider all relevant evidence. Any interested person shall be given a reasonable opportunity to be heard in conjunction therewith. Based upon the evidence so presented, the city manager shall determine whether a nuisance within the meaning of this chapter exists and whether an abatement is appropriate.

D. Within ten (10) days after the hearing, the city manager, or his or her designee, shall give written notice of the decision to the owner and to any other person requesting the same personally or by first class United States mail, postage paid. If a nuisance is determined to exist and abatement is determined to be appropriate, the notice shall contain an order of abatement directed to the owner of the affected property or the person in the control and/or charge of the property, and shall set forth the nature of the graffiti, its location on the premises and the maximum number of days, time and manner for its abatement. The city manager may impose such conditions as are reasonably necessary to abate the graffiti. The decision of the city manager may be appealed to the city council by the filing of a written request for appeal with the city clerk within ten (10) days after the city manager's notice of the decision to the owner. In the event of an appeal, the decision of the City Council shall be final.

E. If the city manager's decision is not appealed and the nuisance is not abated within the time set by the order of abatement, the city manager, or his or her designee, is authorized to enter upon the premises and to abate the graffiti nuisance through utilization of labor, equipment and materials as directed by the city manager. The graffiti shall be removed as authorized herein, but the removal shall not involve the painting or repair of a more extensive area than is necessary for such removal. The city manager shall then prepare a statement of the fact of such abatement and of the expense incurred in abatement and shall file the statement with the city clerk. Such statement shall identify the premises including more than one lot, each separate lot, or all of the lots may be set forth in the same statement.

F. Upon completion of the work required to abate the graffiti, the cost to the city to perform such work shall be assessed against the property owner pursuant to the procedures set forth in Section 8.28.080 of this code.

#### **9.36.090 Unsecured display of aerosol paint spray cans and wide blade markers prohibited.**

It is unlawful for any person doing business in the city to display an aerosol spray can containing any substance capable of defacing property, commonly known as paint, or any wide blade marker capable of defacing property, for sale from any self-service or self-help shelf, counter or other dispenser that is not secured in such manner as to prevent the removal of any such aerosol spray can or wide blade marker without the assistance of business personnel.

#### **9.36.100 Signs required.**

Any person doing business in the city displaying, selling or otherwise providing any of the substances referred to in Section 9.36.090 shall prominently display at the location of sale and/or delivery a sign(s) clearly visible to employees and customers which states in writing, in both English and Spanish, "It is unlawful for any person to sell, lend, or give to any individual under the age of eighteen (18) years, aerosol spray paint cans or wide blade markers."

#### **9.36.110 Posting on City property.**

The City Manager or his or her designee is hereby authorized to post a notice at appropriate locations indicating that pursuant to California Penal Code Section 594.1 no person shall carry any aerosol can of paint or wide blade marker into or upon any city-owned building, grounds, park or other city facility without the permission of an authorized city officer.

**9.36.120 Reward.**

The city may pay to any person who provides information which leads to arrest and conviction of any person who applies graffiti to any public or private property in the city visible to the public a reward as established by city council resolution. The amount of any reward paid pursuant to this section may be sought from the person arrested and convicted as restitution in addition to any other restitution associated with the removal of graffiti.

**9.36.130 Remedies cumulative.**

The remedies provided in this chapter are in addition to other remedies and penalties available under the Hermosa Beach Municipal Code and the laws of the State of California, including but not limited to California Civil Code Section 1714.1, California Penal Code Section 594 *et seq.* and California Vehicle Code Section 13202.6.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk