



# **CITY COUNCIL AGENDA REPORT**

MEETING DATE: April 3, 2007

ITEM NUMBER: IX-4

**SUBJECT:** GRAFFITI ORDINANCE

**DATE:** MARCH 27, 2007

**FROM:** KIMBERLY HALL BARLOW

**PRESENTATION BY:** KIMBERLY HALL BARLOW, CITY ATTORNEY

**FOR FURTHER INFORMATION CONTACT:** KIMBERLY HALL BARLOW, 714-754-5399

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## **RECOMMENDATION:**

Introduce and give first reading to the attached Ordinance Amending Title 11 relating to graffiti.

## **BACKGROUND:**

The City of Costa Mesa, along with most of Orange County, has experienced an increase in graffiti vandalism, which results in aesthetic blight and is related to an increase in crime. Graffiti is often perpetrated by minors expressing a desire to join a gang. Because it is difficult to catch graffiti vandals in the act of committing this crime, preventing the spread of graffiti is important.

## **ANALYSIS:**

The ordinance amendment expands and clarifies the definitions of graffiti implements. Because graffiti vandals often discover new and innovative ways to deface public and private property with graffiti, the ordinance amendment allows the inclusion of implements on the Costa Mesa Police Department's current list of items commonly used or likely to be used in the commission of graffiti vandalism. The ordinance amendment also provides exceptions for legal possession of graffiti implements in public places and further restricts accessibility of graffiti implements by requiring that retailers secure such supplies by placing them under lock and key. This revision is believed to be necessary due to recent observations by Costa Mesa police officers of retail establishments which have not secured aerosol cans and other graffiti implements and admissions of minors to obtaining graffiti implements from unsecured locations in local stores.

## **ALTERNATIVES CONSIDERED:**

The Council could determine not to adopt the proposed revision.

## **FISCAL REVIEW:**

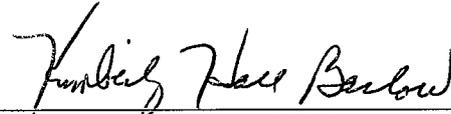
None required.

**LEGAL REVIEW:**

The City Attorney's office has prepared this staff report and the attached ordinance for your consideration.

**CONCLUSION:**

The proposed amendment to the Costa Mesa Municipal Code is intended to deter worsening graffiti in the City. The City Attorney recommends that City Council give first reading to the Ordinance.



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KIMBERLY HALL BARLOW

City Attorney



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CHRISTOPHER SHAWKEY

Police Chief



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ALLAN E. ROEDER

City Manager

DISTRIBUTION: City Manager

ATTACHMENTS: 1 Ordinance

ORDINANCE NO. 07-\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 11 (OFFENSES -- MISCELLANEOUS) OF THE COSTA MESA MUNICIPAL CODE REGARDING FURNISHING GRAFFITI IMPLEMENTS TO MINORS.

WHEREAS, the City Council of the City of Costa Mesa finds that graffiti (also commonly referred to as "tagging") is a worsening problem in the City;

WHEREAS, the City Council finds that there exists a proliferation of graffiti implements with which individuals can deface public and private property by writing, painting, and/or drawing on surfaces;

WHEREAS, the City Council finds that the City's municipal code provisions prohibiting the furnishing of graffiti implements to minors must be expanded to include definitions for these graffiti implements;

WHEREAS, the City Council finds that writing and painting supplies that can be used as graffiti implements are displayed unsecured in retail commercial establishments, and are readily accessible to the public, including minors;

WHEREAS, the City Council finds that an increasing number of individuals committing graffiti offenses are arrested with graffiti implements that were obtained or stolen from retail commercial establishments where such supplies were unsecured;

WHEREAS, the City Council finds that requiring businesses to ensuring that commonly used graffiti implements are secured such that they cannot be easily stolen will contribute to alleviating the graffiti problem in the City.

WHEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 11-141, Title 11, Chapter VII ½ of the Costa Mesa Municipal Code is hereby amended to read as follows:

**Sec. 11-141. Definitions.**

{For the purposes of this chapter, the following words and terms shall have the meaning ascribed thereto:

- (1) "Aerosol paint container" means any aerosol container, regardless of the material

from which it is made, which is adapted or made for the purpose of spraying paint or other substances capable of being permanently affixed to public or private property in a manner that defaces the property.

(2) "Etching cream" means any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.

(3) "Felt tip marker" means any broad-tipped marker pen with a tip exceeding three-eighths of one inch ( $3/8$ ) in width, or any similar implement containing an ink or other pigmented liquid that is not water soluble.

(4) "Graffiti" means any unauthorized inscription, word, figure, or design that is marked, etched, scratched, drawn, or painted on any real or personal property.

(5) "Graffiti implement" means an aerosol paint container, a felt tip marker or marking pen, gum label, a paint stick or paint pen, glass etching tool, glass cutters, etching creams, or other similar devices that are commonly used or are likely to be used to scar glass, metal, concrete or wood, or in a manner that defaces property. Graffiti implement may also include any other implement that the Costa Mesa Police Department has included on a current list of items that are commonly used or likely to be used to commit graffiti offenses.

(6) "Gum label" means any sheet of paper, fabric, plastic or other substance with an adhesive backing which, when placed on a surface, is not easily removable.

(7) "Paint stick" or "graffiti stick" means a device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure, and upon application, leaving a mark at least one-sixteenth ( $1/16$ ) of an inch

in width.

Section 2. Section 11-144, Title 11, Chapter VII ½ of the Costa Mesa Municipal Code is hereby amended to read as follows:

**Sec. 11-144. Implement possession in designated public places.**

(1) No person shall have in his or her possession any graffiti implement while doing any activity in any public park, playground, swimming pool, recreational facility, or while loitering in or near an underpass, bridge abutment, storm drain, and other similar types of infrastructure not normally used by the public.

(2) Exceptions.

(a) A minor who is attending and is actively enrolled in a class that requires use of such implements, of which written permission from the school is in his or her possession.

b) An authorized City of Costa Mesa employee, or agent thereof, or its contractors.

Section 3. Section 11-145, Title 11, Chapter VII ½ of the Costa Mesa Municipal Code is hereby amended to read as follows:

**Sec. 11-145. Furnishing to minors prohibited.**

(1) It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any person under the age of eighteen (18) years without the consent of the parent or other lawfully designated custodian of the person, which custodial consent shall be given in advance in writing.

(2) Every person who owns, conducts, operates or manages a retail commercial

establishment selling aerosol paint containers, paint sticks, felt tip markers or, marking pens, paint pens, glass cutters, glass etching tools, or etching creams, shall store or cause such supplies to be stored in an area viewable by, but not accessible to, the public in the regular course of business without employee assistance, pending legal sale or disposition of such supplies. "Not accessible to the public" means that such supplies must be stored under lock and key, and only the store manager or his/her designee shall have access to the supplies.

It is the intent of this section to permit, but not to require, viewability of aerosol paint containers, paint sticks, felt tip markers, marking pens, paint pens, glass cutters, glass etching tools, etching creams, while they are stored or displayed pending retail sale.

(3) Upon request of a Costa Mesa Police officer, any person who owns, conducts, operates or manages a retail commercial establishment selling aerosol paint containers, paint sticks, felt tip markers or, marking pens, paint pens, glass cutters, glass etching tools, or etching creams shall provide copies of any merchandise inventory that relates to graffiti implements.

Section 4. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 5. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 6. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor of the City of Costa Mesa

ATTEST:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

STATE OF CALIFORNIA )  
COUNTY OF ORANGE )ss  
CITY OF COSTA MESA )

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 07-\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2007, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2007, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
City Clerk and ex-officio Clerk of the  
City Council of the City of Costa Mesa