



CITY COUNCIL AGENDA REPORT

MEETING DATE: May 1, 2007

ITEM NUMBER: **VIII-2**

SUBJECT: GRAFFITI ORDINANCE

DATE: APRIL 24, 2007

FROM: KIMBERLY HALL BARLOW

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

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

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. A slightly different draft ordinance was previously presented to the City Council for consideration, but this item was continued to May 1, 2007 to give the Costa Mesa Chamber of Commerce time to consider the proposed changes to the current graffiti ordinance. One of the provisions affecting retailers was amended to address concerns of the Chamber.

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.

Existing Section 11-143 prohibits minors from possessing graffiti implements without written permission from a parent or guardian, or from a school if they are working on a school project that requires the minors' use of such implements. Existing Section 11-144 prohibits possession of graffiti implements in, on, or near certain public facilities and infrastructures that are commonly the target of taggers.

Under the current version of Section 11-145(2), store owners must "store or cause [graffiti implements] 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 [implements]." The ordinance amendment clarifies this pre-existing requirement by obligating retailers to either store graffiti implements under lock

and key, or behind a counter that is only accessible by authorized employees. This is to ensure that graffiti implements cannot be obtained in a retail store in any way other than through a lawful sale.

The amendment also affects the penalty provisions under Section 11-146. Provisions relating to the Penal Code and the Vehicle Code have been removed. Penal Code and Vehicle Code provisions are enforced by the District Attorney's Office, and need not be reiterated in this code. The proposed version of Section 11-146 accurately reflects that a minor may be required to perform community service when committing a graffiti offense within the City of Costa Mesa at the discretion of the juvenile court.

The proposed additions to Section 11-146 adds mandatory community service for anyone convicted of violating Section 11-142 or 11-145. The community service is not in lieu of jail. The purpose is two-fold: to assist in the removal of existing graffiti, or for general clean-up, and to deter new offenses.

ALTERNATIVES CONSIDERED:

The Council could determine not to adopt the proposed revision.

FISCAL REVIEW:

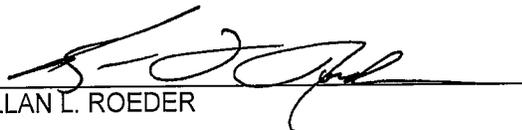
None required.

LEGAL REVIEW:

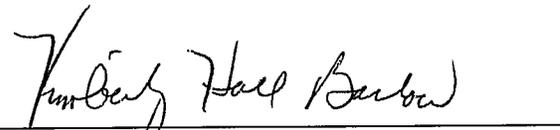
The City Attorney's office has prepared this staff report and the attached ordinance for your consideration.

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.



ALLAN L. ROEDER
City Manager



KIMBERLY HALL BARLOW
City Attorney



CHRISTOPHER SHAWKEY
Police Chief

- ATTACHMENTS: 1 Ordinance
2 Redlined Ordinance

File Name

Date

Time

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 GRAFFITI IMPLEMENTS AND PENALTIES.

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;

WHEREAS, the City Council finds that the City of Costa Mesa has a substantial interest in mitigating graffiti offense recidivism, and that the City needs to have at its disposal all available remedies to successfully deter continuing graffiti offenses;

WHEREAS, the City Council finds that mandatory community service will advance two of the City's purposes: eliminating existing graffiti, and deterring offenders from new offenses.

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 11-145, 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, 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 (a) stored under lock and key, and only the store manager or his/her designee shall have access to the supplies, or (b) stored behind or under a store counter that is only accessible to authorized store personnel.

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 3. Section 11-146, Title 11, Chapter VII ½ of the Costa Mesa Municipal Code is hereby amended to read as follows:

Sec. 11-146. Penalties for violations.

(1) Criminal penalties.

(a) Any minor determined to be a ward of the court under Welfare and Institutions Code Section 602 as a result of committing an offense in the City of Costa Mesa may be required, at the juvenile court's option, to perform community service within the City of Costa Mesa, including graffiti removal service of not less than six (6) hours.

(b) Any violation of this chapter shall be a misdemeanor offense punishable by either six (6) months in jail, a one thousand dollar (\$1,000) fine, or both such fine and imprisonment.

(2) Additional penalties available. Any person convicted of violating Section 11-142 or Section 11-145, shall, in addition to any fines and/or jail time, perform community service within the City of Costa Mesa, including graffiti removal service, of not less than 80 (eighty) hours for the first offense, not less than 160 (one hundred and sixty) for the second, and not less than 240 (two hundred and forty) for a third or subsequent offense.

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

ORDINANCE NO. 07-__

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(3) "Felt tip marker" means any broad-tipped marker pen with a tip exceeding three-eighths of one inch (3/8") in width, ~~marker or any similar implement with a tip which, at its broadest width, is greater than one-sixteenth (1/16) [of an] inch~~ 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.

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authorized store personnel.

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(b) Any violation of this chapter shall be a misdemeanor offense punishable by either six (6) months in jail, a one thousand dollar (\$1,000) fine, or both such fine and imprisonment.

(2) Additional penalties available. ~~Penal Code Section 594 permits a court to impose a maximum penalty for graffiti of a sentence of one (1) year in prison and a fifty thousand~~

~~dollar (\$50,000) fine, or both such fine and imprisonment.~~

~~Vehicle Code Section 42001.7 permits a court to require a littering (Vehicle Code Sections 23111, 23112, 23113) offender to pick up litter or clean up graffiti.~~

~~Vehicle Code Section 13202.6 permits suspension or delay in issuance of a driver's license of one (1) year for each conviction for a graffiti offense.~~

Any person convicted of violating Section 11-142 or Section 11-145, shall, in addition to any fines and/or jail time, perform community service within the City of Costa Mesa, including graffiti removal service, of not less than 80 (eighty) hours for the first offense, not less than 160 (one hundred and sixty) for the second, and not less than 240 (two hundred and forty) for a third or subsequent offense.

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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