

ORDINANCE NO. 10-__

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

WHEREAS, the City Council of the City of Costa Mesa finds that the increase of graffiti, on both public and private property, is creating a condition within the city which results in blight and deterioration of property values and of the comfortable enjoyment of life and property for adjacent and surrounding residents and owners, and contributes to the overall detriment of the city; and

WHEREAS, the City Council finds that graffiti (also commonly referred to as “tagging”) is a worsening problem in the City and constitutes a public nuisance; and

WHEREAS, the City Council finds that graffiti constitutes a threat to public safety which must be abated to alleviate the detrimental impact of such graffiti on the City, and to prevent the further spread of graffiti; and

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; and

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; and

WHEREAS, the City Council finds that the City 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; and

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; and

WHEREAS, the City Council finds that issuing a monetary reward for information leading to the arrest and/or filing of a criminal complaint will contribute to the punishment of and deterrence against graffiti offenses by providing an incentive to citizens to call the Costa Mesa Police Department when they witness a person unlawfully applying graffiti to any public or private property; and

WHEREAS, the City Council finds that a process for the abatement of graffiti and recoupment of costs will further its interest in eliminating existing graffiti and will encourage property owners to maintain their property free of graffiti; and

WHEREAS, the City Council finds that graffiti abatement is a constant and growing expense for the City, and that a process for the recoupment of abatement costs from the person who committed the graffiti offense, or from the person’s parents or

guardians if the person is a minor, will deter “taggers” from defacing property in the City in the future, as well as reimburse the City for some of its costs associated with the graffiti; and

WHEREAS, the City Council finds that certain categories of graffiti incite violence and are especially harmful to the health and safety of the public, and must be removed as quickly as possible to avoid or minimize harm to persons and the whole community; and

WHEREAS, Government Code Section 53069.3 authorizes the City of Costa Mesa to enact ordinances to provide for the use of city funds to remove graffiti from public or private property, and in order to promote expeditious removal of obnoxious graffiti, the use of public funds is authorized as provided in the following sections of the chapter; and

WHEREAS, Government Code Section 53069.5 authorizes a city to offer and pay a reward for information leading to the determination of the identity of, and the apprehension of any person who willfully damages property with graffiti.

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

Section 1. Sections 11-140 to 11-149.5, Title 11, Chapter VII ½ of the Costa Mesa Municipal Code are hereby repealed.

Section 2. Sections 11-140 to 11-149.4, Title 11, Chapter VII ½ of the Costa Mesa Municipal Code are adopted as follows:

Sec. 11-140. Purpose.

The purpose of this chapter is to provide a program for abatement of graffiti from public and private property to reduce blight and deterioration within the city, protect public safety, and for the expeditious removal of graffiti from structures on both public and private property. The city council finds and determines as follows:

- (1) The increase of graffiti, on both public and private property, is creating a condition within the city which results in blight and deterioration of property values and of the comfortable enjoyment of life and property for adjacent and surrounding residents and owners, and contributes to the overall detriment of the city.

(2) Graffiti constitutes a public nuisance and a threat to public safety which must be abated to alleviate the detrimental impact of such graffiti on the city, and to prevent the further spread of graffiti.

(3) Certain categories of graffiti ~~that~~ which incite violence are especially harmful and must be removed as quickly as possible to avoid or minimize harm to persons and the whole community.

~~(4) Government Code Section 53069.3 authorizes a city to enact ordinances to provide for the use of city funds to remove graffiti from public or private property, and in order to promote expeditious removal of obnoxious graffiti, the use of public funds is authorized as provided in the following sections of the chapter.~~

~~(5) Government Code Section 53069.5 authorizes a city to offer and pay a reward for information leading to the determination of the identity of, and the apprehension of any person who willfully damages property with graffiti.~~

(4) The city council strongly recommends that when a person is convicted of violating this chapter that the court impose a long community service sentence ~~for the local graffiti clean-up,~~ in addition to any other penalties imposed by the court.

(5) The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All the provisions of this chapter are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

Sec. 11-141. Definitions.

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

(1) Adhesive stickers means any sheet of paper, fabric, plastic or other substance or material with an adhesive backing.

(2) *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~~ applied on public or private property in a manner that defaces the property.

(3) *Bona fide evidence of majority and identity* means any document evidencing or verifying the identity of an individual and that the individual is at least eighteen (18) years of age, which has been issued by a federal, state or local government entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces.

(4) *City council* means the City Council of the City of Costa Mesa.

(5) *City manager* means the City Manager of the City of Costa Mesa or his/her designee.

(6) *Continuously viewable* means within line of sight of an employee or store manager at all times during business hours. Continuously viewable shall include viewable via closed circuit security cameras.

(7) *Director* means the Director of Public Services of the City of Costa Mesa or his/her designee.

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

(9) *Etchers or etching tools* means any sharp or pointed instrument, device or other mechanism, including but not limited to, glass etchers, metal etchers, cutting and grinding instruments, awls, chisels, glass cutters, drill bits or any other instrument that is capable of scratching or otherwise marking any surface, including but not limited to,

glass, mirrors, windows, steel, aluminum, brass, tin, fiberglass, wood, plastic, concrete or any other surface.

(10) Expense of abatement includes, but is not limited to, court costs, attorney's fees, costs of removal of the graffiti, costs of repair and replacement of defaced property, costs of administering and monitoring the participation of a defendant and his or her parents or guardians in a graffiti abatement program, disbursed reward money, and the law enforcement costs incurred by the city in identifying and apprehending the person who created, caused, or committed the graffiti on the publicly or privately owned real or personal property within the city.

~~(3) — *Felt tip marker* means any broad-tipped marker pen with a tip exceeding three-eighths (3/8) of one (1) inch in width, or any similar implement containing an ink or other pigmented liquid that is not water soluble.~~

(11) Graffiti means any unauthorized inscription, word, figure, symbol, configuration of letters and/or numbers or design that is marked, written, etched, scratched, drawn, scribed, stained, stuck on, affixed, painted or adhered to by any means whatsoever or painted on any surface of public or private real or personal property, including but not limited to, buildings, walls, windows, signs, structures, places, rocks, landscape materials, or other surfaces and/or the interior or exterior of any other structure, regardless of the nature of the material of which the surface is composed.

~~(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.~~

(12) *Graffiti implement* means an adhesive sticker, aerosol paint container, etching cream, etching tool, marking pen, a paint or graffiti stick, spray actuators, or other similar devices that may be used to scar or deface property.

~~(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.~~

(13) *Graffiti violations of law* are those violations referred to in Government Code Section 38772(d)(3), Penal Code Sections 594, 594.1, 594.2, 594.3, 594.8, 640.5, 640.6, 640.7 and 640.8, and any violation of this chapter.

(14) *Marking pen* means any marker pen or any similar implement containing an ink, paint, or other pigmented liquid.

(15) *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.

~~(16) *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 leaving a visible mark on a surface.~~

(17) *Parent or guardian* means a parent with legal custody, guardian, conservator, or relative caregiver of the minor. “Relative caregiver” means a relative, as defined in Section 6550(i) of the California Family Code, who assumed primary responsibility for the minor while the child was in the relative’s care and control, and who is not a biological or adoptive parent.

(18) Spray actuator (also known as a spray tip, nozzle, or button) means an object or device that is capable of being attached to an aerosol or other paint container for the purpose of spraying the substance contained therein.

Sec. 11-142. Graffiti--Unlawful to apply.

(1) It shall be unlawful for any person to apply graffiti to any surface on any public or privately owned real or personal property within the city.

(2) It shall further be unlawful for any person to solicit or command another person to apply graffiti, or for any person to aid or abet, or agree to aid or abet another person to plan to apply graffiti, including but not limited to, acting as a "lookout."

Sec. 11-143. Graffiti – Declaration of nuisance.

The application of graffiti by any person, pursuant to Section 11-142 of this Code is declared to constitute a public nuisance which may be summarily abated.

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

~~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, except as they may be used in lawful activities.~~

Sec. 11-144. Sale and possession.

(1) Implement possession. It shall be unlawful for any to have in his or her possession any graffiti implement with the intent to apply graffiti, while upon public or private property.

~~(1)(2) Implement possession by minors.~~ It shall be unlawful for any person under the age of eighteen (18) years to have in his or her possession any graffiti implement while upon public property, or upon private property, without the prior written consent of the

~~owner of such private property with the intent to apply graffiti, while upon public or private property.~~

~~The foregoing provision shall not apply while the person is attending or travelling to or from a school at which the person is enrolled, if the person is participating in a class at said school which has, as a written requirement of said class, the need to use any graffiti implement.~~

~~(2)(3) *Sale of graffiti implements to minors.* It shall be unlawful for any person, other than a parent or legal guardian, to knowingly 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~~ anyone 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.~~~~

~~(3)(4) *Proper identification presented prior to sale.* No person shall sell any pressurized can containing paint or dye, marking pens, adhesive stickers, etchers or any other graffiti implement without first obtaining bona fide evidence of majority and identity from the purchaser.~~

~~(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.~~

Sec. 11-145. Public Access to Graffiti Implements; Signage.

(1) Restricted access. Aerosol paint containers and actuators shall not be accessible to the public in the regular course of business without employee assistance, pending legal sale or disposition of such supplies.

(2) *Continuously viewable implements.*

(a) Every person who owns, conducts, operates or manages a retail commercial establishment selling paint sticks, marking pens, or etching creams shall store or cause such supplies to be stored in an area continuously viewable by store employees.

(b) *Etching tools.* Every person who owns, conducts, operates or manages a retail commercial establishment selling masonry or glass drill bits, carbide drill bits, glass cutters, grinding stones, awls, chisels or carbide scribes, or other similar implement shall store or cause such items to be stored in an area continuously viewable by store employees.

(3) *Customer signage.* Every retail commercial establishment selling graffiti implements shall post a sign in clear public view at or near display of such products stating: "Pursuant to Penal Code Section 594.1, Graffiti is against the law. Any person

who defaces real or personal property with paint or any other liquid, tool, or device is guilty of a crime punishable by imprisonment of up to six (6) months and/or a fine up to \$1,000.”

(4) *Additional signage.* Every retail commercial establishment selling graffiti implements shall place a sign in the direct view of such persons responsible for accepting customer payment for graffiti implements stating: “Pursuant to Costa Mesa Municipal Code Title 11, Section 11-143, selling Graffiti Implements to persons less than eighteen (18) years of age is against the law and punishable by six (6) months in jail and/or a fine of \$1,000.”

(5) *Merchandise inventory.* Upon request of a Costa Mesa Police Officer or Code Enforcement Officer, any person who owns, conducts, operates or manages a retail commercial establishment selling graffiti implements shall provide copies of any merchandise inventory.

Sec. 11-146. 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.~~

(1) Any violation of this chapter shall be a misdemeanor offense punishable by either six (6) months in jail, a one thousand dollar (\$1,000.00) 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~~

~~eighty (80) hours for the first offense, not less than one hundred sixty (160) for the second, and not less than two hundred forty (240) for a third or subsequent offense.~~

(2) In lieu of, or in addition to the penalties specified in this section, a minor or other person who is convicted of or pleads guilty or nolo contendere to graffiti violations shall be required to perform community service as described by the court, based on the following minimum requirements:

(a) The minor or adult shall perform not less than forty (40) hours of community service.

(b) The period of community service shall be performed under the supervision of a community service provider approved by the Chief of Police.

(c) Reasonable effort shall be made to assign the minor or other person to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or other person.

Sec. 11-147. Reward provisions.

(1) Pursuant to Section 53069.5 of the Government Code, the city does hereby offer a reward of up to two thousand dollars (\$2,000.00). The amount of the award to be determined by the police chief, for information leading to the arrest and conviction of any person for violation of Penal Code Section 594 or section 11-142 of this Code, the use of graffiti, not to exceed one (1) reward of two thousand dollars (\$2,000.00) per violation. In the event of multiple contributors of information for a single violation, the reward amount shall be divided by the city in the manner deemed appropriate by the city police chief. For the purposes of this section, diversion of the offending violator to a community service program, or a plea bargain to a lesser offense, shall constitute a conviction. The chief of police may award up to \$500 to any person who provides

credible information regarding any graffiti violation in the City, which leads to probable cause for an arrest of an individual(s).

(2) Claims for rewards under this section shall be filed, processed, and paid in accordance with procedures established by the police chief.

(3) The person convicted of committing the graffiti offense shall be liable for any rewards paid pursuant to this section and, if that person is an unemancipated minor, the parent or guardian of the minor shall be jointly and severally liable for any rewards paid pursuant to this section.

Sec. 11-148. Removal and prevention provisions.

(1) It is unlawful for any person, who is the owner or who has primary responsibility for control of property or who has primary responsibility for the repair or maintenance of property ("property owner"), to permit property ~~which~~ that is defaced with graffiti to remain so defaced for a period of seven (7) days after notice of same, unless: (a) said person shall demonstrate by a preponderance of evidence that he or she does not have the financial or physical ability to remove the defacing graffiti; or (b) it can be demonstrated that the responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program in which case it shall be unlawful to permit such property defaced with graffiti to remain defaced for a period of fifteen (15) days after notice of same.

~~(2) The existence of graffiti within the city limits of Costa Mesa is a public and private nuisance and may be abated according to the provisions and procedures contained in this chapter.~~

(2) The existence of any surface of a structure on a parcel of land which has been defaced with graffiti after removal more than five (5) times in twelve (12) months by the city at its expense is a public and private nuisance, and may be abated by ~~minor~~

modifications ~~thereto~~ to the structure or surface, or to the immediate surrounding area ~~area surrounding same~~, according to the provisions and procedures herein contained as follows: ~~Said~~ The structure or surface or surfaces may be required to be retrofitted, at the cost of the property owner of said lot or ~~at the cost of the city at the city's option~~, with such features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof.

~~(4) Persons removing graffiti pursuant to a city sponsored graffiti removal program shall be deemed workers covered by the city's worker's compensation program and insurance coverage.~~

(3) Whenever the city becomes aware or is notified and determines that graffiti is located on publicly or privately owned property within the city, the city shall be authorized to use city funds for the removal of ~~same~~ the graffiti, or ~~for the painting or repairing of same~~ the property, but shall not authorize or undertake to provide for the painting or repair of any more extensive area than that where the graffiti is located, unless the city manager, ~~or his designee~~, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or the person causing the graffiti, or if a minor, his or her parent or guardian (~~hereinafter collectively referred to as "responsible parties"~~), agree to or are ordered to pay for the costs of repainting or repairing the more extensive area.

(4) The owner of property on which is located a surface of a structure other than residential which has been defaced with graffiti after removal more than five (5) times in twelve (12) months, or the immediate surrounding area, shall permit the city to enter upon and make such modifications there, at the city's cost. The modifications shall

include such features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof.

(5) To further discourage graffiti while providing overall consistency, utility fixtures and equipment shall be of a uniform paint-type and color. Any gas, electric, telephone, water, sewer, cable, telephone and other utility operation in the City of Costa Mesa shall paint its above-surface metal fixtures with a uniform paint type and color which meets with the approval of the city manager. Since most utility fixtures and equipment are located in the public rights-of-way and are highly visible, graffiti on these structures shall be removed by the utility company within forty-eight (48) hours of being reported to the utility.

~~Sec. 11-149.1. Abatement and cost recovery proceedings.~~

~~(1) *[State laws adopted.]* Pursuant to Sections 38772, 38773, 38773.2, 38773.6 and 53069.3 of the Government Code, the city may summarily abate any nuisance resulting from the defacement of the property of another by graffiti. The provisions of Government Code Sections 38772, 38773, 38773.2 and 38773.6 are incorporated herein.~~

~~(2) *Notice and conduct of due process hearing.* The director of community services or his or her designee ("hearing officer") shall give not less than forty-eight (48) hours' notice, served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure (if the owner of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Section 6062) to the party who is responsible for the maintenance of a parcel of property~~

~~containing graffiti ("property") and, if a different person is the owner of record on the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current, then to said owner also, of a "due process" hearing at which said property owner shall be entitled to present evidence and argue that his or her property does not contain graffiti. The city shall provide notice of such hearing to the person causing the graffiti and if such person be a minor, then also to his or her parent or guardian in the manner provided in Government Code Sections 38773.1, 38773.2 and 38773.5. The determination of the hearing officer after the "due process" hearing shall be final and not appealable. If, after the due process hearing, regardless of the attendance of the responsible parties or their agents, the hearing officer determines that the property contains graffiti, the hearing officer shall give written notice ("eradication order") that, unless the graffiti is removed within five (5) days thereafter, the city shall enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the community services director) or such other eradication thereof ("eradication effort") as the community services director determines appropriate, and shall provide the responsible parties thereafter with an accounting of the costs of such eradication effort on a "full cost recovery basis."~~

~~(3) — *Eradication effort.* Not sooner than the time specified in the order of the hearing officer, the community services director or his designee shall implement the eradication order and shall provide an accounting to the responsible parties of the costs thereof ("eradication accounting").~~

~~(4) — *Cost hearing.* If the responsible parties fail to request a hearing before the hearing officer on the eradication accounting ("cost hearing") or, if requested, a cost hearing is conducted after extending due process to the responsible parties, and after~~

~~such a cost hearing, the hearing officer determines that all or a portion of the costs are appropriately chargeable to the eradication effort, the total amount set forth in the eradication accounting, or such amount thereof determined as appropriate by the hearing officer, ("assessed eradication charges") shall be due and payable to the city from the responsible parties within thirty (30) days.~~

~~(5) — *Lien.*~~

~~(a) — If all or any portion of the assessed eradication charges remain unpaid after thirty (30) days, pursuant to the authority created by law, such portion thereof as shall remain unpaid shall constitute and is hereby declared to constitute a lien on the property which was the subject matter of the eradication effort. The community services director shall present a resolution of lien to the city council, and upon passage and adoption thereof, shall cause a certified copy thereof to be recorded with the Orange County Recorder's office and with the Orange County Auditor/Controller. The amount of such charges shall be collected at the same time and in the same manner as ordinary municipal taxes. If delinquent, the amount of such charges shall be subject to the same penalties and the same procedure for foreclosure and sale, as are provided for ordinary municipal taxes.~~

~~(b) — If all or any portion of the assessed eradication charges remain unpaid after thirty (30) days, pursuant to the authority of Government Code Sections 38772, 38773, 38773.2 and 38773.6, such portion thereof as shall remain unpaid may be made:~~

~~(i) — A personal obligation of the person causing the graffiti, and if such person be a minor, then also of his or her parent or guardian;~~

~~(ii) — A lien against the property of the person causing the graffiti, and if such person be a minor, then also against the property of his or her parent or guardian;~~

~~(iii) — A special assessment against a parcel of land owned by the person causing the graffiti, and if such person be a minor, then also against his or her parent or guardian.~~

~~(Ord. No. 93-10, § 1, 5-3-93; Ord. No. 95-8, § 1, 6-19-95)~~

~~Sec. 11-149.2. Common utility colors and paint type.~~

~~Any gas, electric, telephone, water, sewer, cable, telephone and other utility operation in the City of Costa Mesa shall paint its above-surface metal fixtures with a uniform paint type and color which meets with the approval of the city manager.~~

~~(Ord. No. 93-10, § 1, 5-3-93; Ord. No. 95-8, § 1, 6-19-95)~~

~~Sec. 11-149.3. Land use permits.~~

~~In approving tentative or parcel maps, conditional use permits, variances, or other similar land use entitlements, the city shall consider imposing any or all related conditions at the public hearing required by law for approval of the tentative map, conditional use permit, variance or other similar land use entitlement. If approved:~~

~~(1) — *Use of anti-graffiti material.* Developer shall apply an anti-graffiti material of a type and nature that is acceptable to the director of community services to each of the publicly-viewable surfaces on the improvements to be constructed on the site deemed by the director of community services to be likely to attract graffiti ("graffiti-attracting surfaces");~~

~~(2) — *Right of access to remove graffiti.* Developer shall grant, prior to resale of any of the parcels which are within the territory of said map, the right-of-entry over and access to such parcels upon forty-eight (48) hours of posting of notice by authorized city employees or agents to the city for the purpose of removing or "painting over" graffiti from graffiti-attracting surfaces previously designated by the director, and the right to remove such graffiti; and~~

~~(3) — *Supply city with graffiti-removal material.* Developer shall, for a period of two (2) years after the resale of his or her final lot, provide the city with sufficient matching paint~~

~~and/or anti-graffiti material on demand for use in the painting over or removal of designated graffiti-attracting surfaces.~~

~~(4) — *Owner to immediately remove graffiti.* Developer shall provide, either as part of the conditions, covenants and restrictions, or as separate covenants recorded against individual lots, prior to resale of same property or land, which covenant shall run with the land and be for the benefit of the city, in a form satisfactory to the city attorney, that the owner of the lots shall immediately remove any graffiti placed thereon.~~

~~(Ord. No. 93-10, § 1, 5-3-93; Ord. No. 95-8, § 1, 6-19-95)~~

~~Sec. 11-149.4. Prevention provisions.~~

~~(1) — Any surface of a structure on a parcel of land placed in any land use other than residential which has been defaced with graffiti after removal more than five (5) times in twelve (12) months, or the immediate area surrounding said surface, may be required to be retrofitted, at the cost of the property owner of said lot, with such features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof.~~

~~(2) — The owner of property on which is located a surface of a structure other than residential which has been defaced with graffiti after removal more than five (5) times in twelve (12) months, or the immediate area surrounding said surface, shall permit the city to enter upon and make such modifications thereto, at city's cost, which modifications shall include such features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof.~~

~~(Ord. No. 93-10, § 1, 5-3-93; Ord. No. 95-8, § 1, 6-19-95)~~

~~Sec. 11-149.5. Parental civil liability.~~

~~Any parent or legal guardian, whose child under the age of eighteen (18) possesses a graffiti implement, shall be personally liable for any and all costs to any person incurred in connection with the removal of graffiti caused by said child, or by said graffiti implement, and for all attorney's fees and court costs incurred in connection with the civil prosecution of any claim for damages~~

Sec. 11-148.1. Use of city funds to remove graffiti.

(1) The city may use city funds to remove graffiti from publicly or privately owned real or personal property located within the city, and to replace or repair public or privately owned property within the city that has been defaced with graffiti that cannot be removed cost effectively.

(2) The city shall only remove the graffiti itself, or, if the graffiti cannot be removed cost effectively, the repair or replacement of the portion of the property that was defaced, and not the painting, repair, or replacement of other parts of the property that were not defaced.

(3) The removal, repair, or replacement may be performed, in the case of publicly owned real or personal property, only after securing the consent of the public entity having jurisdiction over the property, and in the case of privately owned real or personal property, only after securing the consent of the owner or possessor.

(4) The Costa Mesa Police Department may promulgate procedures for pre-removal preservation of sufficient evidence of the graffiti for criminal prosecutions or proceedings pursuant to Section 602 of the Welfare and Institutions Code pertaining to the person or persons who inscribed the graffiti. These procedures shall be followed by the city prior to or during removal of the graffiti.

Sec. 11-149. Summary abatement – Cost recovery.

The city may summarily abate any nuisance at the expense of the persons creating, causing, committing or maintaining it.

Sec. 11-149.1. Cost recovery against the person who created, caused, or committed the nuisance.

(1) The city shall summarily abate any nuisance resulting from the defacement of the property of another by graffiti at the expense of the minor or other person creating, causing, or committing the nuisance. The expense of abatement of the nuisance shall be a lien against property of the minor or other person and a personal obligation against the minor or other person.

(2) If the person causing the graffiti nuisance is a minor, then the parent or guardian of the minor shall be jointly and severally liable with the minor. The expense of abatement of any nuisance, resulting from the defacement by a minor of the property of another by graffiti, shall be a lien against the property of a parent or guardian, having custody and control of the minor, and a personal obligation against the parent or guardian having custody and control of the minor, pursuant to Government Code Sections 38772 and 38772.6.

(3) The property of the minor causing the graffiti nuisance, and the property of the parent or guardian of the minor, shall collectively or individually be referred to as the "assessed property."

(4) Where the director is required to cause the abatement of a public nuisance pursuant to the provisions of this chapter, he/she shall keep an accounting of the cost thereof, including incidental expenses for the abatement. The term "incidental expenses" includes, but is not limited to, the actual expenses and costs of the city in the preparation of notices, specifications and contracts, inspection of the work, and the cost of printing and mailing any notices required by this chapter, as well as administrative

costs in the amount of thirty-three percent of the total cost of abatement. Within thirty (30) days of the conclusion of the abatement, the director shall submit an itemized statement of costs to the city manager. Within ninety (90) days of the close of the police department's investigation, the director shall set a hearing to review the cost accounting before the city manager. The director shall cause notice of the time and place of the hearing to be given to the person causing the nuisance, and to his/her parents or guardian in the event the person causing the nuisance is a minor, and to any other interested person requesting the same, by United States mail, postage prepaid, addressed to the person at his last known address at least ten (10) days in advance of the hearing. The cost hearing shall be set no later than forty-five (45) days following the date the director causes notice of the time and place of the hearing to the person causing the nuisance, and to his/her parents or guardian in the event the person causing the nuisance is a minor.

(5) Cost accounting statement--Processing. At the cost hearing, the city manager shall hear and pass upon the statement of the director, together with any objections or protests raised by any of the persons liable to be assessed for the cost of abating the nuisance. The city manager may hear any relevant evidence at the cost hearing; the formal rules of evidence shall not apply. Thereupon, the city manager shall make such revision, correction and modification to the statement as he/she may deem just, after which the statement is submitted, or as revised, corrected or modified shall be conformed. The city manager shall issue a written decision within ten (10) days of the hearing, and it shall include reference to Sections 1094.5 and 1094.6. The decision of the city manager shall be final.

(6) Assessment of costs/liens against the subject property.

- a. Pursuant to California Government Code Sections 38772 and 38773.6, all expenses as determined by the Hearing Officer in connection with such abatement shall be charged and become an indebtedness to the owner of the assessed property, as well as a lien upon the assessed property.
- b. Pursuant to California Government Code Section 38773.6, the confirmed cost of abatement of a graffiti nuisance within the city shall constitute a special assessment against the lot or parcel of land that comprise the assessed property. After confirmation of the report, a copy thereof shall be transmitted to the Orange County Auditor/Controller, whereupon it shall be the duty of the Auditor/Controller to add the amounts of the assessment, or assessments, to the next regular bills of taxes levied against the respective lots and parcels of land that comprise the subject property for municipal purposes, and thereafter the amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure for foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.
- c. Such notice of lien for recordation shall be in the form substantially as follows:

NOTICE OF LIEN

Claim of City of Costa Mesa

Pursuant to the authority vested by the provisions of the Costa Mesa Municipal Code, the Director of Public Services of the City of Costa Mesa did on, or about the _____ day of _____, 20____, cause the premises located at _____ to be rehabilitated or the building or structure on the property to be repaired, painted over or otherwise modified in order to abate a public nuisance on real property; and the City of Costa Mesa, shall assess the cost of such rehabilitation, repair or demolition upon the

real property located at _____, belonging to the person causing the graffiti nuisance, or the person's parent or guardian in the case of a minor (the "Assessed Property"); and the assessed cost has not been paid nor any part thereof; and that the City of Costa Mesa does hereby claim a lien on the Assessed Property for the rehabilitation, repair or demolition in the amount of this assessment, to wit: the sum of \$ _____; and the same shall be a lien upon the Assessed Property until the same has been paid in full and discharged of record.

The Assessed Property, hereinabove mentioned and upon which a lien is claimed, is that certain parcel of land lying and being in the City of _____, County of _____, State of California, and more particularly described as follows:

_____ (description)

Assessor Parcel Number(s):

Dated: This _____ day of _____, 20_____.

City Manager, City of Costa Mesa.

Section 11-149.2. Cost recovery against the property where nuisance is maintained.

(1) The city shall summarily abate any nuisance at the expense of the persons creating, causing, committing, or maintaining it and may make the expense of abatement of nuisances a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with California Government Code Sections 38773 and 38773.5.

(2) Cost of abatement. Where the director is required to cause the abatement of a public nuisance pursuant to the provisions of this chapter, he shall keep an accounting of the cost thereof, including incidental expenses for the abatement. The term "incidental expenses" includes, but is not limited to, the actual expenses and costs of the city in the preparation of notices, specifications and contracts, inspection of the work, and the cost of printing and mailing any notices required by this chapter, as well

as administrative costs in the amount of thirty-three percent of the total cost of abatement. Within thirty (30) days of the conclusion of the abatement, the director shall submit an itemized statement of costs to the city manager and shall set a hearing to review the cost accounting before the city manager. The director shall cause notice of the time and place of the hearing to be given to the owner and/or occupant of the property to which the same relate, and to any other interested person requesting the same, by United States mail, postage prepaid, addressed to the person at his last known address at least ten (10) days in advance of the hearing. The cost hearing shall be set no later than forty-five (45) days following the date the city manager receives the itemized cost of abatement.

(3) Cost accounting statement--Processing. At the cost hearing, the city manager shall hear and pass upon the statement of the director, together with any objections or protests raised by any of the persons liable to be assessed for the cost of abating the nuisance. The city manager may hear any relevant evidence at the cost hearing; the formal rules of evidence shall not apply. Thereupon, the city manager shall make such revision, correction and modification to the statement as he may deem just, after which the statement is submitted, or as revised, corrected or modified shall be conformed. The city manager shall issue a written decision within ten (10) days of the hearing, and it shall include reference to Sections 1094.5 and 1094.6. The decision of the City Manager shall be final.

(4) Assessment of costs/liens against property.

- a. Pursuant to California Government Code Sections 38773 and 38773.5, all expenses as determined by the city manager in connection with such abatement shall be charged and become an indebtedness to the owner of

such structure or premises, as well as a lien upon the affected property as elsewhere herein provided.

- b. Pursuant to California Government Code Section 38773.5, the confirmed cost of abatement of a nuisance upon any lot or parcel of land shall constitute a special assessment against the respective lot or parcel of land to which it relates. After confirmation of the report, a copy thereof shall be transmitted to the Orange County Auditor/Controller, whereupon it shall be the duty of the Auditor/Controller to add the amounts of the assessment, or assessments, to the next regular bills of taxes levied against the respective lots and parcels of land for municipal purposes, and thereafter the amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure for foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.

(5) Such notice of lien for recordation shall be in the form substantially as follows:

NOTICE OF LIEN

Claim of City of Costa Mesa

Pursuant to the authority vested by the provisions of the Costa Mesa Municipal Code, the Director of Public Services of the City of Costa Mesa did on, or about the _____ day of _____, 20____, cause the premises, hereinafter described to be rehabilitated or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a public nuisance on said real property; and the City of Costa Mesa, shall assess the cost of such rehabilitation, repair or demolition upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that the City of Costa Mesa does hereby claim a lien on such rehabilitation, repair or demolition in the amount of said assessment, to it; the sum of \$ _____; and the same shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property, hereinabove mentioned and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Costa Mesa, County of Orange, State of California, and more particularly described as follows:

_____ (description)

_____ Assessor Parcel Number(s):

_____ Dated: This _____ day of _____, 20_____.

_____ City Manager, City of Costa Mesa.

(6) Right to Judicial Review. If the city manager's decision is in favor of the city, the appellant may seek judicial review of the city manager's decision by filing a petition for writ of mandate pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

Sec. 11-149.3. Civil liability for acts of willful misconduct resulting in property damage.

Notwithstanding any of the provisions of Section 11-149.1, the City may seek civil restitution for the cost of abatement of any nuisance resulting from the defacement of the property of another by graffiti as follows:

(1) Any person that causes any injury to or the defacement of the property of another by any act of graffiti shall be personally liable for any damages resulting from the graffiti, pursuant to California Civil Code Section 1714.

(2) Any act of graffiti by a minor that results in any injury to or the defacement of property of another shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, including the cost of abatement to the prevailing party, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the graffiti, not

to exceed twenty-five thousand dollars (\$25,000) except as provided in subdivision (3), for each tort of the minor.

(3) The amount listed in subdivision (2) shall be adjusted every two years in accordance to the amounts set by the Judicial Council to reflect any increases in the cost of living in California, as indicated by the annual average of the California Consumer Price Index, pursuant to California Civil Code Section 1714.1. The maximum liability imposed by this section is the maximum liability authorized under this section at the time that the act of graffiti by a minor was committed.

Sec. 11-149.4. Other legal and equitable remedies.

The city, at its discretion, may pursue any and all legal and equitable remedies for the collection of unpaid fines, interest and penalties. Pursuit of one remedy does not preclude the pursuit of any other remedies until the total fines, interest and penalties owed by a person under this chapter have been collected.

Section 3. 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 4. 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 5. 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 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 _____, 2010.

Mayor of the City of Costa Mesa

ATTEST:

City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney