

(O-89-202)

ORDINANCE NUMBER O- 17284 (NEW SERIES)

ADOPTED ON MAY 1 1989

AN ORDINANCE AMENDING CHAPTER IX, ARTICLE 5, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 95.0126 RELATING TO GRAFFITI AND ADDING SECTION 95.0127 RELATING TO GRAFFITI ABATEMENT ON PRIVATE PROPERTY.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter IX, Article 5, Division 1 of the San Diego Municipal Code be and the same is hereby amended by amending section 95.0126 to read as follows:

SEC. 95.0126 ENFORCEMENT

A through E No change.

F. 1. Any lettering, advertisement, card, poster, sign or notice of any kind placed upon public property, or on any curb, sidewalk, post, pole, lamp post, hydrant, bridge, tree or other surface located on public property, in violation of the provisions of this Code, may be removed without prior notice to the responsible party by any officer or employee of The City of San Diego designated to do so by the Planning Director or the City Manager. For purposes of this subsection, public property shall include any public right-of-way.

If it is determined that removal may cause defacement or damage to public property, the Planning Director or City Manager shall notify the responsible

party to remove the offending material within ten (10) days or be billed for the costs of removal and repair, replacement or refinishing of the damaged or defaced public property, unless immediate removal is necessitated because of public safety considerations, in which case the responsible party shall be billed for the necessary costs of removal, repair and replacement or refinishing. The responsible party who elects to remove the offending material shall be responsible for corrective repair, replacement or refinishing to the satisfaction of the Planning Director or City Manager.

2. As used in this subsection only, the term "responsible party" means the person or entity which authorized or commissioned the printing or placement of the offending material. It shall be presumed that the person or entity which benefits financially or otherwise from the dissemination of the printed information on that material is the party authorizing its placement.

G and H No change.

Section 2. That Chapter IX, Article 5, Division 1 of the San Diego Municipal Code be and the same is hereby amended by adding Section 95.0127 to read as follows:

SEC. 95.0127 GRAFFITI ABATEMENT PROCEDURE

a. Purpose and Intent. It is the purpose and intent of this section to provide a procedure for removal of graffiti from walls and structures on

privately owned property in order to reduce blight and deterioration within the City and to protect the public health and safety.

The City finds and determines that graffiti is obnoxious and constitutes a public nuisance, as defined in Section 11.16, and must be abated to avoid the detrimental impact of such graffiti on the City and its residents and prevent the further spread of graffiti.

b. Definitions. Whenever the following terms are used in this section, they shall have the following meaning:

1. "Graffiti" means the unauthorized spraying of paint or marking of paint, ink, chalk, dye or other similar substances on buildings, fences, structures and similar places.

2. "Unauthorized" means without the permission of the property owner or else being in violation of this Article and Division.

3. "Graffiti abatement procedure" means an abatement procedure which identifies graffiti, issues notice to the landowner to abate the graffiti, and provides for a cure in the absence of timely response.

4. "Private contractor" means any person with whom the City shall have duly contracted to remove graffiti.

5. "Abatement Official" means the City Manager or the City Planning Director and their duly designated representatives.

c. Graffiti Prohibited.

1. To the extent not otherwise provided for by state law, it shall be unlawful for any person to place graffiti, as defined herein, upon buildings, fences, structures and similar places within the City of San Diego.

2. It shall be unlawful for any person owning or otherwise being in control of any real property within the City to maintain, permit or allow any graffiti to be placed upon or remain upon any structure located on such property when the graffiti is visible from the street or other public or private property.

3. Whenever the Abatement Official determines that graffiti on any structure in the City of San Diego is visible from the street or other public or private property, the Abatement Official may issue an abatement notice, or initiate a prosecution against the responsible person violating this section, or both.

d. Abatement Notice. The Abatement Official causing a written abatement notice to be served upon the owner(s), occupant or person in control of the affected premises, as such name and address appears on the last equalized property tax assessment roll of the County of San Diego, shall provide the property owner, occupant or person in control ten (10) days after the date of the notice in which to remove the graffiti, or the property thereafter shall be subject to graffiti abatement by the

City. Notice shall be issued pursuant to Section 11.16 as follows:

1. By personal service on the owner, occupant or person in charge or control of the property; or

2. By registered or certified mail addressed to the owner at the last known address of said owner.

If this address is unknown, the notice will be sent to the property address; or

3. By posting the notice conspicuously on the property frontage at least once every 50 feet.

The abatement notice shall be substantially in the following form:

NOTICE OF INTENT TO REMOVE GRAFFITI

Date:

NOTICE IS HEREBY GIVEN that you are required by law at your expense to remove or paint over the graffiti which constitutes a public nuisance located on the property commonly known as _____, San Diego, California, which is visible to public view, within ten (10) days after the date of this notice; or, if you fail to do so, city employees or private contractors employed by the City will be authorized to enter upon your property and abate the public nuisance by removal or painting over the graffiti. The costs of the abatement by the City's employees or its private contractors may be assessed upon your property and such costs will constitute a lien upon the land until paid,

if you are in violation of San Diego Municipal Code section 95.0127.

All persons having any objection to or interest in this action are hereby notified of their right to appeal this determination and to submit any objections or comments to the designated representative listed below, within ten (10) days from the date of this notice. At the conclusion of this ten (10) day period the City may proceed with the abatement of the graffiti inscribed on your property at your expense without further notice."

e. Appeal. Within ten (10) days from the mailing or personal service of the abatement notice, the owner or person occupying or controlling the premises or lot affected may appeal the determination to the City Manager of The City of San Diego.

In lieu of the procedure established by Section 11.16(d), the City Manager shall cause the appeal to be assigned to a Hearing Officer who shall schedule a hearing to be heard within ten (10) days thereafter. The Hearing Officer shall be appointed by the City Manager, shall be a member of the California State Bar and shall not be a City employee. The Hearing Officer shall be compensated by The City of San Diego for the time spent on deciding an appeal. The appellant and the City Manager or designate shall each have the right to appear in person and be represented by legal

counsel, to receive notice, to present evidence, to call and cross-examine witnesses under oath and to present argument. The Hearing Officer shall have the power to compel attendance of witnesses and documents by subpoena in accordance with the Civil Code. The formal rules of evidence shall not apply and any relevant evidence that is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious business affairs shall be permissible. Hearsay evidence may be considered by the Hearing Officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The formal exceptions to the hearsay rule shall apply, however. The Hearing Officer is authorized to rule upon issues of law or fact. The decision of the Hearing Officer shall be issued in writing no later than fourteen (14) days after the conclusion of the hearing. Such decision shall be the final administrative remedy of the appellant and shall be binding upon the City. The City Manager may promulgate supplementary rules and procedures for the conduct of hearings, forms of notice and proceedings, and preparation and submission of the record.

f. Removal by City. Upon the failure of the responsible person to comply with the notice of abatement, when final, by the designated compliance date, the Abatement Official is then authorized to cause

the graffiti to be abated by city forces or private contract, and the City or its private contractor is expressly authorized to enter and abate graffiti upon utility cabinets and exterior walls and fences abutting public streets, property or rights of way. All reasonable efforts to minimize damage from such entry shall be taken by the City, and any paint used to obliterate graffiti shall be as close as practicable to background color(s).

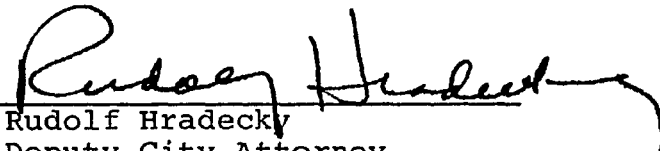
g. Private Property Consent Forms. Property owners in The City of San Diego may consent in advance to city entry onto private property for graffiti removal purposes. The City will make forms for such consent available.

h. Public Property. Where a structure is owned by a public entity other than the City, the removal of the graffiti may be authorized only after securing the consent of an authorized representative of the public entity having jurisdiction over the structure.

i. Reimbursement. The Abatement Official shall adopt procedures to obtain reimbursement for the costs of abatement from the violators of subsection (c); provided, however, no costs shall be assessed against any property owner who was not responsible for, or who did not cause, the placement of the graffiti on the affected premises.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By 
Rudolf Hradecky
Deputy City Attorney

RH:mb
04/07/89
Or.Dept:Council-McColl
O-89-202
Form=o.code

MAY 1 1989

Passed and adopted by the Council of The City of San Diego on
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksmā	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Blonda R. Barnes*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 17 1989

MAY 1 1989

....., and on

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Blonda R. Barnes*, Deputy.

Office of the City Clerk, San Diego, California	
Ordinance Number	0-17284
Adopted	MAY 1 1989

89 APR 13 AM 10:50

CITY CLERK'S OFFICE
SAN DIEGO, CA

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

RECEIVED

TO: THE CITY CLERK, SAN DIEGO, CALIFORNIA
FROM: THE CITY CLERK, SAN DIEGO, CALIFORNIA

RE: [Illegible]

APR 13 1989

APR 13 1989

BY: [Illegible]

FOR: [Illegible]

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

RECEIVED

APR 13 1989

- Mr. [Illegible]
- Mr. [Illegible]
- Mr. [Illegible]
- Mr. [Illegible]
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APR 13 1989

CERTIFICATE OF PUBLICATION

OFFICE OF THE CITY CLERK
202 C STREET, 2ND FLOOR
SAN DIEGO, CA 92101

IN THE MATTER OF
AN ORDINANCE AMENDING CHAPTER IX, ARTICLE 5, DIVISION
1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION
95.0126 RELATING TO GRAFFITI AND ADDING SECTION 95.0127
RELATING TO GRAFFITI ABATEMENT ON PRIVATE PROPERTY.

NO.

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This ordinance amends Section 95.0126 of the Municipal Code pertaining to the removal of unauthorized signs and graffiti from public rights of way and public property. It adds a provision authorizing the City Manager or the Planning Director to notify the party responsible for the placement of offending material to either remove it or be billed for the costs of removal. It creates an administrative presumption that any party or entity which benefits financially from the dissemination of the offending printed material is the party which authorized its placement, thereby affixing financial responsibility for removal.

Section 95.0127 is added to the Municipal Code to address the removal and abatement of graffiti from private property as a public nuisance. "Graffiti" is defined as the unauthorized spraying or marking of paint, ink, chalk, dye or similar substance on buildings, fences and similar structures. To be unauthorized, the placement must be without the property owner's permission or else be in violation of the Municipal Sign Code ordinance.

Section 95.0127 makes it unlawful to place or maintain graffiti upon private property when it is visible from the public rights of way or from other public or private property. Abatement officials are authorized to issue abatement notices to the property owner or person in control of the property to remove the graffiti or be subject to a graffiti abatement process. The form of notice and procedures for issuance are specified. The property owner or person in control has ten days in which to comply or appeal the determination to the City Manager concerning whether a violation exists. Appeal procedures are prescribed.

A private property owner may authorize the City to enter upon the premises to abate the graffiti. When authorization is not forthcoming, the City may abate the graffiti by city forces or by contract and bill the responsible party. No costs may be assessed against any property owner who had not caused or authorized the graffiti to be placed in the first instance.

Abatement activity by the City or contract forces will be limited to utility cabinets and the exterior walls and fences abutting public rights of way or public property. Abatement may consist of painting over the graffiti in a manner and color as near as practicable to the background color.

A complete copy of the ordinance is available for inspection in the office of the City Clerk of the City of San Diego, 12th Floor, City Administration Building, 202 "C" Street, San Diego, CA 92101.

INTRODUCED ON APRIL 17, 1989
Passed and adopted by the Council of the City of San Diego on MAY 1, 1989

AUTHENTICATED BY: MAUREEN O'CONNOR,
Mayor of the City of San Diego, CA
CHARLES G. ABDELNOUR
City Clerk of the City of San Diego, CA

(SEAL)
By RHONDA R. BARNES, Deputy.
Pub. May 15 139652

THOMAS D. KELLEHER

I, _____, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

ORDINANCE NUMBER 0-17284 (NEW SERIES)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

MAY 15

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 15 day of MAY, 19 89.



(Signature)

5 1/4" x 2 x 59.48 = \$121.54