

(O-2008-104)

ORDINANCE NUMBER O- 19750 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 12 2008

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 4,  
DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE BY  
AMENDING SECTIONS 54.0401, 54.0405, AND 54.0414, AND  
DELETING 54.0412, ALL RELATING TO GRAFFITI

WHEREAS, the City Council of the City of San Diego has found it necessary to take a new, zero-tolerance approach to the epidemic of graffiti vandalism which has plagued the City of San Diego; and

WHEREAS, to implement this new, zero-tolerance approach to graffiti vandalism, it is necessary to update the City's Municipal Code provisions dealing with graffiti; and

WHEREAS, courts have recognized the longstanding and unsettling link between graffiti and the type of violent activity by criminal street gangs present in the City of San Diego; and

WHEREAS, the People of the State of California have recognized this link when in 2000 they overwhelmingly enacted Proposition 21; and

WHEREAS, notwithstanding Proposition 21's passage and its enhanced penalties for juvenile, gang, and graffiti offenders, the graffiti problem persists; and

WHEREAS, courts have recognized that many graffiti vandals obtain the implements used to commit graffiti vandalism by shoplifting these items from stores; and

WHEREAS, courts recognize that ordinances requiring merchants selling implements commonly used by graffiti vandals may limit graffiti vandalism and have rejected challenges to these ordinances; and

WHEREAS, the Council for the City of San Diego deems it proper to exercise more oversight over the efforts made by local law enforcement, prosecution, and nuisance abatement professionals' efforts to address the graffiti problem in the City of San Diego to ensure those efforts' effectiveness, and

WHEREAS, the City Council seeks to have graffiti vandals receive all penalties contemplated by state law, including up to three years in state prison and \$10,000 fines for felony vandals, full restitution orders to crime victims, community service requirements so that offenders clean up the graffiti they create, and counseling requirements; NOW, THEREFORE,

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

Section 1. That Chapter 5, Article 4, Division 4 of the San Diego Municipal Code is amended by amending section 54.0401 to read as follows:

**§54.0401 Declaration of Purpose**

- (a) It is the purpose and intent of this Division to provide a procedure for removal of *graffiti* from surfaces on public or private property in order to reduce blight and deterioration within the City and to protect the public health and safety.
- (b) The City finds and determines that *graffiti* is obnoxious and constitutes both a public nuisance and a crime, and that it must be abated to avoid the detrimental impact of such *graffiti* on the City and its residents and prevent the further spread of *graffiti*.
- (c) The City further finds that *graffiti* is often related to activities of criminal street gangs, and its eradication and the aggressive prosecution of those who defile others' property with *graffiti* is a useful component in the City

of San Diego's efforts to combat activity by criminal street gangs. In order to further the City's efforts to combat criminal street gangs, it is the City's desire that all offenders, whether adult or juvenile, who violate the City's anti- *graffiti* laws be prosecuted aggressively, be compelled to pay victim restitution, and if granted probation to be compelled to clean up *graffiti* in the City of San Diego.

Section 2. That Chapter 5, Article 4, Division 4 of the San Diego Municipal Code is amended by amending section 54.0405 to read as follows

**§54.0405 Graffiti Prohibited**

- (a) It is the intent of the People of the City of San Diego that all perpetrators of *graffiti* vandalism be prosecuted to the fullest extent of the law, and that prosecutors seek stiff penalties, including prison or jail time, full and timely payment of restitution to *graffiti* vandalism victims, and community service as authorized by state law.
- (b) It is unlawful for any responsible person, to maintain *graffiti* that has been placed upon, or to allow *graffiti* to remain upon, any surface within that person's control, possession or ownership when the *graffiti* is visible from the street or other public property.

Section 3. That Chapter 5, Article 4, Division 4 of the San Diego Municipal Code is amended to delete section 54.0412.

Section 4. That Chapter 5, Article 4, Division 4 of the San Diego Municipal Code is amended by amending section 54.0414 to read as follows:

**§54.0414      Restriction on Display of Graffiti Instruments for Sale**

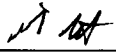
- (a) It is unlawful for any person, firm or entity engaged in a commercial enterprise, to display for sale, trade or exchange, any aerosol paint container, marking pens with tips exceeding four millimeters in width containing anything other than a solution which can be removed with water after it dries, *or glass etching product* except in an area from which the public shall be securely precluded without employee assistance.
- (b) The only two acceptable methods for displaying aerosol paint containers, marking pens with tips exceeding four millimeters in width containing anything other than a solution which can be removed with water after it dries, and *glass etching products* shall be by containment in: (1) a completely enclosed cabinet or other storage device which shall be permanently affixed to a building or building structure, and which shall at all times, except during access by authorized representatives, remain securely locked; or (2) in an enclosed area behind a sales or service counter from which the public is precluded from entry.

Section 5. The Mayor and City Attorney are required to provide annual reports to the Committee on Public Safety & Neighborhood Services. The report shall describe efforts: 1) to apprehend and convict graffiti offenders, 2) to seek civil or administrative relief from graffiti offenses, and 3) to abate graffiti in the City of San Diego.

Section 6. That a full reading of this ordinance is dispensed with prior to its passage, since a written was made available to the City Council and the public prior to the day of its passage.

Section 7. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
David M. Stotland  
Deputy City Attorney

DS:aml  
01/30/08  
Dept: PS&NS Committee  
O-2008-104

I hereby certify that the following Ordinance was passed by the Council of the City of San Diego, at its meeting of MAY 27 2008.

ELIZABETH S. MALAND, City Clerk

By   
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Please note the Mayor did not sign this resolution within the specified time limit. See San Diego City Charter Section 280(c)(4).