

MEETING DATE: 06/18/07

AGENDA ITEM: Discussion Regarding Options to Enhance the City's
Graffiti Abatement Program

ATTACHMENTS

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1	Culver City Municipal Code §§ 9.04.200, <i>et seq</i>	1-10

CULVER CITY MUNICIPAL CODE § 9.04.200 et seq.

GRAFFITI.

§ 9.04.200 PREVENTION AND REMOVAL OF GRAFFITI.

Whenever the Chief Administrative Officer or his designee determines that graffiti is located on public property not owned by the City of Culver City, or on private property, so as to be visible to a person utilizing any public street or highway in the City of Culver City, including but not limited to any roadway, parkway, sidewalk or alley, then the Chief Administrative Officer or his/her designee is authorized to expend City funds for the removal of the graffiti. Removal of the graffiti at public expense shall be restricted to the painting and repair of only the area where the graffiti is located.

('65 Code, § 22-10.1) (Ord. No. 91-006 § 1 (part))

§ 9.04.205 DEFINITIONS.

For the purpose of this Subchapter, the following words and phrases are defined and shall be construed as hereinafter set out, unless it is apparent from the context that a different meaning was intended:

AEROSOL CONTAINER. Any aerosol based container, bottle, spray device or other mechanism, which is adopted or made for the purpose of spraying paint, ink, dye or other similar substance.

BONA FIDE EVIDENCE OF MAJORITY AND IDENTITY. Any document evidencing the age and identity of an individual 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 issued by a member of the armed forces.

CHIEF ADMINISTRATIVE OFFICER. The Chief Administrative Officer of the City of Culver City or his or her designee.

CITY. The City of Culver City, California.

FELT TIP MARKER. Any indelible marker, pen or similar implement which contains a fluid which cannot be removed with plain water and has a flat, pointed or angled tip which at its broadest width is greater than one-eighth (1/8th) inch.

GRAFFITI. Writings, drawings or inscriptions of any type which, in the determination of the Chief Administrative Officer, has any of the following characteristics.

1. Insults or incites hatred or contempt of any racial, religious or ethnic group;

2. Refers to the name of a gang or includes words or symbols associated with a gang or individual;
3. Insults or threatens any identifiable individual or group;
4. Includes obscene or indecent language or depictions;
5. Constitutes an aesthetic blight or eyesore to a neighborhood;
6. Tends to attract more graffiti; and
7. Promotes criminal activity or promotes retaliatory action by an individual(s).

GRAFFITI IMPLEMENT. An aerosol container, a felt tip marker, nail polish, shoe polish, paint stick, etching instrument, or any other device containing paint, ink, chalk, dye or similar substance which when used or applied is capable of defacing glass, metal, concrete, wood composites, or fabric.

GRAFFITI OFFENSE. The unauthorized application of paint, ink, chalk, dye or the use of any other instrument to deface, damage or destroy public and private buildings, structures, or any portion thereof.

PAINT STICK or GRAFFITI STICK. Any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance that cannot be removed with plain water and is capable of being applied to a surface by pressure, and upon application, leaves a mark at least one-eighth (1/8th) inch in width.

('65 Code, § 22-10.2) (Ord. No. 94-027 § 3 (part))

§ 9.04.210 GRAFFITI PROHIBITED.

A. It is unlawful for any person to apply or attempt to apply graffiti to any public or privately owned structure located on public or privately owned real property within the City. There is no presumption that any person has a right to apply graffiti, as herein described, on any public or private property within the City.

B. It shall be unlawful for any owner, lessee, occupant or other person having present possession of a lot or parcel of land within the City to (1) permit graffiti to remain upon such lot or parcel of land or (2) to maintain any structure affixed to such lot or parcel of land with graffiti on such structure or any portion thereof, for a period in excess of forty-eight (48) hours following service by the City of a notice to abate graffiti. Each day the graffiti is maintained beyond the initial forty-eight (48) hours period hereby constitutes a separate offense and is subject to the penalties set forth in § 9.04.240.

2 ('65 Code, § 22-10.3) (Ord. No. 94-027 § 3 (part))

§ 9.04.215 POSSESSION OF GRAFFITI IMPLEMENT.

No person under the age of eighteen (18) years and not in the presence of a parent or legal guardian shall have in his or her possession a graffiti implement, as defined by § 9.04.205, while in any public park, playground, swimming pool, public recreational facility or any public right-of-way in the City unless necessary in order to participate in any City or School District sponsored function. This Section shall not apply to authorized employees of the City of Culver City nor shall it apply to the authorized agents or contractors under contract with the City.

('65 Code, § 22-10.4) (Ord. No. 94-027 § 3 (part))

§ 9.04.220 REMOVAL POLICY.

The Chief Administrative Officer or his/her designee shall develop a graffiti removal program to assist property owners in the expeditious removal of graffiti from their property. Notwithstanding any other provision of this Subchapter, the City shall be authorized to recover its costs incurred in the removal of graffiti from private property if:

A. The removal of graffiti or other inscribed material from privately owned real property exceeds four (4) requests from the City to the property owner or occupant or a maximum of six hundred (600) square feet per privately owned real property during one (1) calendar year, which is not removed by the property owner or occupant.

B. Where the removal of graffiti has been mandated pursuant to § 9.04.230, the owner of the affected property shall reimburse the City for such services.

C. Nothing in this Subchapter shall prohibit the Chief Administrative Officer or his/her designee from waiving the provisions of this Section if it can be determined that the affected property owner has demonstrated a conscientious effort to prevent graffiti from occurring on their property as exhibited by, but not limited to, the installation of security devices such as surveillance cameras, security lighting, sprinklers linked to motion sensors; protective or covering landscaping; graffiti resistant building materials; or the application of graffiti-resistant paint.

('65 Code, § 22-10.5) (Ord. No. 94-027 § 3 (part))

§ 9.04.225 AUTHORIZATION TO REMOVE; METHODS.

Graffiti may be removed by any of the following methods:

A. Whenever the Chief Administrative Officer determines that writings or other inscriptions constitutes "graffiti" as defined in § 9.04.205 and is so located on public or privately owned property within the City so as to be capable of being viewed by a person utilizing any public right-of-way in the City, the Chief Administrative Officer is

authorized to provide for the removal of the graffiti or other inscribed material upon advising the property owner that removal will be undertaken by the City if not removed within forty-eight (48) hours of notification of the existence of graffiti. The City Council has determined that the failure to remove graffiti constitutes a public nuisance which permits the City by and through its authorized representative to enter on private property to abate the declared public nuisance, without additional notice to or authorization from the landowner.

1. In removing the graffiti or other inscribed material, the painting or repair of a more extensive area shall not be authorized.

2. Where a structure is owned by a public entity other than this City, the removal of the graffiti or other inscribed material is authorized after notifying the public entity having jurisdiction over the structure and such entity fails to remove the graffiti within forty-eight (48) hours after receipt of notice to abate the graffiti.

B. Graffiti which is located on privately owned structures on privately owned real property within the City and which can be viewed by a person utilizing any public right-of-way within the City may be removed by the City at the owner's expense as a public nuisance pursuant to § 9.04.230. This Section shall apply under the following circumstances:

1. The private property owner has persuaded, allowed or encouraged the graffiti problem;

2. The Chief Administrative Officer determines that the removal of graffiti or other inscribed material from a privately owned property has exceeded four (4) requests from the City or a maximum of six hundred (600) square feet per privately owned real property during one (1) calendar year and the property owner has not removed the graffiti within the required time after a notice to abate has been given as described in § 9.04.230 below.

('65 Code, § 22-10.6) (Ord. No. 94-027 § 3 (part))

§ 9.04.230 NOTICE TO ABATE; APPEAL; ABATEMENT BY CITY.

Whenever the Chief Administrative Officer determines that graffiti is being maintained upon the premises within the City in violation of § 9.04.210, the Chief Administrative Officer shall send, by registered or certified mail or post, at a conspicuous place on the premises where the graffiti is located, written notice to the owner, and to any lessee, occupant or other person having present possession of a lot or parcel of land within the City that the graffiti must be removed within forty-eight (48) hours from the date of service of the notice. The notice shall be entitled "Notice to Abate Graffiti," in letters not less than one (1) inch in height, and shall cite this Subchapter as authority for

such abatement. The notice shall contain a general description of the property on which the graffiti is located.

A. The notice shall be on City letterhead in substantially the following form:

NOTICE TO ABATE GRAFFITI

NOTICE IS HEREBY GIVEN that under the provisions of Section 9.04.210 of the Culver City Municipal Code ____ you are required at your expense to remove or paint over the graffiti located on the property commonly known as _____, City of Culver City, California, which is visible to public view, within forty-eight (48) hours after the date of service of this notice. The graffiti is visible to public view and therefore constitutes a public nuisance. If you fail to comply with this order the City or its contractor will enter upon your property and abate the public nuisance. The cost of the abatement of the City or its contractor will be assessed upon your property and such costs will constitute a lien upon the land until paid.

All persons having any objection to, or interest in said matter are hereby notified to submit an appeal to the Office of the Chief Administrative Officer within forty-eight (48) hours from the date of this notice.

At the conclusion of this forty-eight (48) hour period the City may proceed with the abatement of the graffiti on your property at your expense without further notice.

B. If an appeal has been made to the Office of the Chief Administrative Officer, within five (5) days from the date of the Notice to Abate Graffiti, the Chief Administrative Officer, or his/her designee, shall hold an administrative hearing on appeal. The decision of the Chief Administrative Officer or his/her designee shall be final and conclusive.

C. If an appeal has not been submitted as set forth in § 9.04.230 B. above, or if the appeal has been denied following an administrative hearing, and if the private property owner fails to remove or fails to cause the graffiti to be removed by the designated date, or such continued date thereafter as approved by the Chief Administrative Officer, then the Chief Administrative Officer shall cause the graffiti to be abated as a public nuisance by the City or its contractor, and the City or its contractor is expressly authorized to enter upon the premises for such purpose.

('65 Code, § 22-10.7) (Ord. No. 94-027 § 3 (part))

§ 9.04.235 RECOVERY OF COSTS.

Should the Chief Administrative Officer be required to abate the graffiti as a public nuisance, as set forth in § 9.04.230 C., the City may recover, pursuant to Cal. Gov't

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Code § 38773, the costs of abatement through the assessment of a lien against the property on which the nuisance is maintained.

A. Prior to the recordation of a lien against property for the recovery of abatement and related administrative costs, the City, in accordance with Cal. Gov't Code §§ 38773.1 or 38773.5, shall provide written notification, by registered or certified mail, to the property owner that a lien will be assessed against their property and such costs will constitute a lien upon the land until paid. The notice of lien shall for purpose of this Subchapter be in form substantially as follows:

NOTICE OF LIEN

Pursuant to Cal. Gov't Code § 38773 and the authority of Ordinance _____ of the City of Culver City, the Chief Administrative Officer of the City of Culver City did on or about the ____ day of _____, 19__, cause the removal of graffiti at the premises hereinafter described in order to abate a public nuisance on said real property; and the City Council of the City of Culver City did on the ____ day of _____, 19__, assess the cost of such abatement upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Culver City does hereby claim a lien for such costs of abatement in the amount of said assessment to wit: the sum of ____ dollars; 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 Culver City, County of Los Angeles, State of California, and particularly described as follows: _____

Dated this ____ day of _____, 19__.

City Clerk, City of Culver City

B. Between the first and fifteenth day of July of each year, the Chief Administrative Officer shall cause to be published in the official newspaper of the City a notice that any person affected or aggrieved by an act or determination of the City or the City's Chief Administrative Officer in connection with the provisions of this Subchapter may appeal to the City Council. An appeal shall be in writing and shall be filed with the Office of the City Clerk prior to the fifteenth day of July with the appropriate fee, or from time to time thereafter may be determined by the Council, the City Council shall hear and render a decision upon each appeal, and the determination of the Council shall be final and conclusive. In the event any determination of the Chief Administrative Officer is modified by determination of the City Council or any assessment changed or corrected,

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the Chief Administrative Officer shall cause the correction to be made upon the record showing the assessment.

C. The appellant shall bear the burden of proof which shall be a preponderance of evidence. Oral testimony unsupported by physical evidence is disfavored.

D. At the expiration of the time for appeal, or upon the determination by the City Council of all appeals so filed, and in compliance with the requirements of any determination so made, the Chief Administrative Officer shall deliver to the County Auditor of the County of Los Angeles an abstract of each lot or parcel of land within the City affected by this Section and the amount of each such charge to be placed upon the assessment roll against the respective parcel. Thereafter, the charges shall be of the same character and effect, subject to the same penalties, and shall be collected in the same manner and at the same time as City taxes. The provision of this Section shall not apply to any lot or parcel of land if the charge against it has been paid prior to the delivery of the abstract to the County Auditor.

E. No charges for removal of graffiti shall be imposed until after six (6) months from the date of the adoption of this Subchapter unless amended by the Culver City Council.

('65 Code, § 22-10.8) (Ord. No. 94-027 § 3 (part))

§ 9.04.240 FAILURE TO REMOVE GRAFFITI UPON NOTICE.

In addition to any costs incurred by the City for the abatement of graffiti from private property, failure to voluntarily abate graffiti after notification shall result in the following penalties:

A. The failure of any person, firm, partnership, or corporation, failing to remove graffiti within the prescribed forty-eight (48) hour period as set forth in § 9.04.210 B. hereby constitutes an infraction and is punishable by a fine of One Hundred Dollars (\$100.00) upon first conviction thereof.

B. Any person, firm, partnership, or corporation convicted of violating § 9.04.210 B. of this Subchapter for a second time or any subsequent number of times shall be deemed guilty of an infraction or misdemeanor and shall be punished by a fine of Two Hundred Fifty Dollars (\$250.00).

C. Any person, firm, partnership, or corporation convicted of violating § 9.04.210 B. of this Subchapter for a third time or any subsequent number of times shall be deemed guilty of an infraction or misdemeanor and shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00).

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D. Any person, firm, partnership, or corporation previously convicted three (3) times under this Section, violating the provisions of § 9.04.210 B. hereof, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided in § 9.04.260, hereof.

('65 Code, § 22-10.9) (Ord. No. 94-027 § 3 (part))

§ 9.04.245 ALTERNATIVE ACTIONS.

The violation of any of the provisions of this Subchapter or any State law pertaining to vandalism of property with a graffiti implement shall constitute a nuisance and may be abated by the City through a civil process by means of a restraining order, preliminary or permanent injunction or in any other manner available to the City under provisions of applicable ordinances or State law.

('65 Code, § 22-10.10) (Ord. No. 94-027 § 3 (part))

§ 9.04.250 REWARD FOR INFORMATION.

The City Council may, by resolution, offer and pay a reward for information leading to the apprehension and conviction of any person who places graffiti or other inscribed material as defined herein upon public or privately owned structures within the City. In addition to any fines levied by the City for violation of this Subchapter, any person who has damaged property by inscribing graffiti on public or private property shall be liable for the amount of any reward paid pursuant to this Subchapter and Cal. Gov't Code § 53069.5.

('65 Code, § 22-10.11) (Ord. No. 94-027 § 3 (part))

§ 9.04.255 PARENTAL RESPONSIBILITY.

Pursuant to Cal. Civil Code § 1714.1(b), where graffiti is applied by an unemancipated minor, the parents or legal guardian of said minor shall be jointly and severally liable for payment of civil damages resulting from the misconduct of the minor in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for each such offense.

('65 Code, § 22-10.12) (Ord. No. 94-027 § 3 (part))

§ 9.04.260 PENALTY FOR VIOLATION.

It shall be unlawful for any person, firm, partnership, or corporation to violate any provision or fail to comply with any of the requirements of this Subchapter.

A. Except as provided in § 9.04.240, any person, firm, partnership, or corporation violating any provision of this Subchapter, or failing to comply with any of its requirements shall be deemed guilty of an infraction or misdemeanor and upon conviction thereof shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment. Each such person, firm, partnership, or corporation shall be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of this Subchapter, is committed, continued, or permitted by such person, firm, partnership, or corporation, and shall be deemed punishable therefor as provided in this Subchapter.

B. Notwithstanding the penalties set forth in Subsection A. above, any person who maliciously defaces, damages or destroys property with a graffiti implement is guilty of vandalism, pursuant to Cal. Penal Code § 594, and upon conviction thereof shall be punished by imprisonment in the State prison or in a County jail for a period not to exceed one (1) year, or by a fine of Five Thousand Dollars (\$5,000.00), but no more than Fifty Thousand Dollars (\$50,000.00), depending upon the severity and the amount of defacement, damage or destruction to property, or by both such fine and imprisonment.

('65 Code, § 22-10.13) (Ord. No. 94-027 § 3 (part))

§ 9.04.265 COMMUNITY SERVICE.

A. Upon conviction of any person for violation of §§ 9.04.210 or 9.04.215, or any State law pertaining to vandalism of property with a graffiti implement, the City shall petition the sentencing court to impose community service time, pursuant to Cal. Penal Code § 640.6. The sentencing court may require the performance of community service within the City in addition to any monetary penalties imposed. In the event the sentencing court approves community service, the City shall request any adult or emancipated minor convicted of vandalism, as defined by Cal. Penal Code § 594(a)(1) to:

1. Complete a minimum of twenty-four (24) hours, but no more than forty-eight (48) hours of community services cleaning up, removing, and repairing property damaged by graffiti for the first conviction; and

2. Complete forty-eight (48) hours, but no more than ninety-six (96) hours of community services cleaning up, removing, and repairing property damaged by graffiti for each subsequent conviction.

B. Any person who is under the age of eighteen (18) when he or she violates any provision of this Subchapter or any State law pertaining to vandalism of property with a graffiti implement, and is found to be a person described in Cal. Welf. & Inst. Code § 602 by reason of the commission of vandalism, may be required to perform community service time pursuant to Cal. Welf. & Inst. Code § 742.16. For any minor adjudicated guilty of vandalism, the City will petition the juvenile court and the court may, in

addition to any other penalties imposed by the City, require the unemancipated minor to provide the necessary labor to clean up, repair, or replace defaced, damaged or destroyed property, or otherwise make restitution to the property owner.

C. If a minor is personally unable to pay any fine levied for violating any provisions of this Subchapter or is otherwise unable to make restitution for damages, the minor's parent or legal guardian shall be liable for payment of the fine or restitution. If the parent or legal guardian cannot make restitution, the sentencing court may waive payment of the fine or community service time by the parent or legal guardian upon a finding of good cause. If the sentencing court waives payment of the fine by the parent or legal guardian, the City shall petition the sentencing court, and the court, at the court's option, may order the parent or legal guardian to provide the necessary labor, equal to the number of hours assigned to the minor adjudicated guilty of violating any provision of this Subchapter, to clean up, repair, or replace property damaged by the unemancipated minor.

('65 Code, § 22-10.14) (Ord. No. 94-027 § 3 (part))

§ 9.04.270 SUSPENSION OR DELAY OF DRIVING PRIVILEGES.

For each conviction of a person aged thirteen (13) to twenty-one (21) for violation of §§ 9.04.210 or 9.04.215, or any State law pertaining to vandalism of property with a graffiti implement, the City shall petition the sentencing court to suspend existing driving privileges or delay the issuance of driving privileges in accordance to Cal. Veh. Code § 13202.6.

('65 Code, § 22-10.15) (Ord. No. 94-027 § 3 (part))