

ORDINANCE NO. 29-24

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING CHAPTER 8.37 OF THE ORANGE MUNICIPAL CODE PERTAINING TO GRAFFITI.

WHEREAS, California Government Code sections 38773.5 and 53069.3 provide the City of Orange authority to regulate and implement procedures to remove, prevent, and abate graffiti from both private and public property.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES
HEREBY ORDAIN AS FOLLOWS:**

SECTION I:

1. The subject Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines (Guidelines) Sections 15060(c)(2) and 15060(c)(3) because review and evaluation of potential impact of the Ordinance demonstrate that it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it is not a "project" as defined in Guideline 15378.

2. The subject Ordinance is exempt from CEQA per Guideline 15061(b)(3) because it can be seen with certainty, after review and evaluation of the facts regarding the Zoning Code administrative amendments, that there is substantial evidence that adoption of this Ordinance would not have a significant effect on the environment and the commonsense exemption applies.

SECTION II.

Sections 8.37.020 of the Orange Municipal Code, "Health and Safety – Graffiti – Definitions," 8.37.070 of the Orange Municipal Code, "Health and Safety – Graffiti – Graffiti on Private Property," and 8.37.080 of the Orange Municipal Code, "Health and Safety – Graffiti – Graffiti Removal," are hereby amended to read as follows:

8.37.020 – Definitions.

~~"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 defacing property.~~

~~"Etching tool or scribe" means any sharp or pointed instrument that is comprised of hardened steel, carbide or stainless steel which is capable of etching or marking glass, plastic, wood, metal or concrete surfaces. This definition includes, but is not limited to, picks, scribes, awls, markers and etchers.~~

~~"Felt tip marker" means any indelible marker or similar implement with a tip which at its broadest width is greater than one-eighth inch, containing an ink which is not water soluble.~~

"Graffiti" means any unauthorized inscriptions, words, figures, art, or designs created by marking, etching, inscribing, drawing, spraying of paint, or marking symbols using This includes using materials like paint, spray paint, ink, chalk, dye, etching tools, slap tags or similar ~~materials~~ substances on public or private structures, buildings ~~or places~~, posts, lamppost, poles, signs, curbs, sidewalks, streets, roads, trees, walls, fences, objects, or other facilities regardless of the of the material of the surface.

"Graffiti implement" means any ~~implement capable of~~ tool that can ~~marking a surface~~ to create graffiti. ~~including, but not limited to,~~ This includes aerosol paint containers, paint sticks, felt-tip markers, ~~or~~ marking pens, ~~marking instruments~~, drill bits, grinding stones, scribes, glass cutters, or etching tools, or other ~~implements~~ items capable of ~~scarring~~ damaging glass, plastic, wood, metal or concrete.

"Obnoxious graffiti" means graffiti which has any of the following characteristics:

1. Insults or incites hatred or contempt of any person or group on the basis of ethnic origin, gender, race, or religious affiliation;
2. Refers to the name of a gang or includes words or symbols associated with a gang or individual gang member;
3. Refers to the name or identity of an individual tagger or members of a tagging group or organization;
4. Insults or threatens any identifiable individual or group;
5. Includes obscene or indecent language or depictions;
6. Promotes criminal activity or promotes retaliatory action by an individual(s);
7. ~~Tends to attract more graffiti;~~
8. Constitutes an aesthetic blight ~~or eyesore~~ to a neighborhood.

~~"Paint stick or graffiti stick" means any 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-eighth inch in width, visible from a distance of 20 feet and not water soluble.~~

“Slap tags” means images or messages with an adhesive glue or tape, such as, but not limited to, decals, stickers, posters, or labels that may be applied or affixed to any surfaces on public and private property without permission.

"Spray actuator" (~~also known as a~~ “spray tip”, “nozzle”, or “button”) means an object which is capable of being attached to an aerosol paint container for the purpose of spraying paint. ~~the substance contained therein.~~

8.37.070 – Graffiti on Private Property.

~~It shall be unlawful for the owner of any private property to permit graffiti or other inscribed materials to remain on structures so as to be capable of being viewed by a person utilizing any public right of way in the City, such as a highway, street, road, parkway or alley, providing the City has given written notice to the owner or occupant requiring removal of the graffiti within a period of not less than three calendar days and such time period has elapsed without remedial action.~~

- A. Owner(s), occupant(s) or person(s) in control of any private property shall keep such property clear and free of graffiti at all times.
- B. Private property owner(s), occupant(s), or person(s) in control shall not allow graffiti visible from public areas (e.g., highways, streets, parkways, sidewalks, alleys) to remain on their property but in no case 24 hours after receiving removal notice from the City.

8.37.080 ~~Graffiti Removal~~ Abatement

~~Notwithstanding any other provisions of the Orange Municipal Code, when the City Manager or designee finds that graffiti or other inscribed material constitutes obnoxious graffiti and by virtue of its location on public or private property is in full view of a person utilizing any public right of way, whether a highway, street, road, parkway or alley, the City shall be authorized, although not required, to undertake the removal of such graffiti. If the findings set forth herein are not made, the City may undertake the removal of such graffiti, but shall charge a fee for such removal as set forth by this code.~~

~~Prior to the removal of such graffiti, the City shall obtain the written consent of the owner for such action and the owner shall execute an appropriate release form and right of entry form to permit such graffiti removal. If the City provides for the removal of graffiti, it shall not authorize or undertake to provide for the painting or repair of any more extensive area than that area where the graffiti is located.~~

- 1. Obnoxious graffiti. The City Manager or designee may immediately without notice remove obnoxious graffiti that threatens public health, safety, or welfare.
- 2. Abatement. If owner(s), occupants(s), or person(s) in control of private property does not remove graffiti 24 hours after receiving removal notice from the City, graffiti is per se a public nuisance and the City may remove graffiti at the owner’s expense.

3. Appeals. A challenge to cost recovery may be made to the City Manager or designee. Such appeal must be submitted in writing within 24 hours of the City's action and filed with the City Clerk's Office along with payment of an appeal fee in an amount established by resolution of the City Council. The notice of appeal shall briefly state the grounds of appeal and be signed by the appealing party. Said appeal shall be heard by the City Manager or designee as soon as practical. The appellant shall be allowed to introduce evidence and call witnesses at the hearing. The decision by the City Manager or designee shall be in writing and shall be final.

SECTION III.

Section 8.37.090 of the Orange Municipal Code, "Health and Safety – Graffiti – Responsibility for Cost of Removal," is hereby deleted in its entirety.

SECTION IV.

Section 8.37.095 of the Orange Municipal Code, "Health and Safety – Graffiti – Cost of Graffiti Removal," is hereby deleted in its entirety.

SECTION V.

Section 8.37.100 of the Orange Municipal Code, "Health and Safety – Graffiti – Penalty," is hereby amended to read as follows:

8.37.100 ~~Penalty~~ Remedies.

~~In addition to other penalties under state law which may be applicable, any violation of this chapter shall be a misdemeanor offense punishable by either six months in jail, a \$1,000.00 fine, or both such fine and imprisonment.~~

- A. Nothing in this Chapter shall limit the City from pursuing administrative, civil, or criminal citations or to abate public nuisances or violations of this Chapter in accordance with 1.08 and 1.10 of the Orange Municipal Code.
- B. Minor and Parental Financial Responsibility. Pursuant to California Government Code Section 38772, the City Council makes the cost of graffiti abatement for violations committed by a minor: (1) a personal obligation of both the minor and the minor's parent(s) or legal guardian(s); and (2) a lien against the property of the minor or a lien against the property of the minor's parent(s) or legal guardian(s). Pursuant to California Government Code Section 38772(c), the County Probation Officer shall report the names and addresses of the minor's parent(s) or legal guardian(s) to the City Clerk.
- C. Recovery of Attorneys' Fees. Pursuant to California Government Code Section 38773.5(b), the City can recover attorneys' fees in any action, administrative proceeding, or special proceeding to abate public nuisances. Fees are awarded to the prevailing party and limited to

cases where the City seeks its own fees from the start. Awards cannot exceed the City's reasonable fees.

- D. Treble Damages. Pursuant to California Government Code Section 38773.7, if a second or subsequent judgment within two years finds a property owner or responsible person liable for a condition that can be abated (excluding California Health and Safety Code Section 17980 conditions), the City may seek an order for that person to pay three times the abatement costs.

SECTION VI:

If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION VII:

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this ____ day of _____, 2024.

Daniel R. Slater, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

APPROVED AS TO FORM:

Mike Vigliotta, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2024, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2024 was duly passed and adopted by the following vote, to wit:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange