

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," 8.37.080 of the Orange Municipal Code, "Health and Safety – Graffiti – Graffiti Removal," 8.37.090 of the Orange Municipal Code, "Health and Safety – Graffiti – Responsibility for Cost of Removal," are hereby amended to read as follows:

8.37.020 Definitions.

"Graffiti" means any unauthorized inscriptions, words, figures, art, or designs created by marking, etching, inscribing, drawing, spraying paint. This includes using materials like paint, spray paint, ink, chalk, dye, etching tools, slap tags or similar substances on public or private structures, buildings, 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 tool that can mark surfaces to create graffiti. This includes aerosol paint containers, paint sticks, felt-tip markers, marking pens, drill bits, grinding stones, scribes,

glass cutters, etching tools, and other items capable of 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. Constitutes an aesthetic blight to a neighborhood.

"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" ("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.

8.37.070 Graffiti on Private Property.

- 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 Abatement.

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 Remedies.

- 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, City of Orange

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