

Chapter 9.66

GRAFFITI REMOVAL AND ABATEMENT

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9.66.010 Title.

This Chapter shall be known as the City of Santa Barbara "Graffiti Removal and Abatement Ordinance." (Ord. 5349, 2005.)

9.66.020 Purpose and Intent.

The City Council hereby finds and declares that:

A. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property may be disregarded with impunity.

B. This perception fosters a sense of disrespect of the law that results in an increase in crime; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property.

C. Graffiti is a threat to public safety and must be quickly abated, as provided herein, to prevent its proliferation and harm to persons and property in the City as the re-application, and spread of, graffiti has been found to dramatically decrease when it is removed in a timely fashion.

D. This Chapter is intended to be consistent with Government Code sections 38772 et seq. and 53069.3 which authorize the enactment of ordinances for the use of City funds to remove graffiti from public or privately owned permanent structures located on public or privately owned real property from the city.

E. The enlistment of business and property owners in the City and their assistance, active resistance, and prior consent to allow the City to abate graffiti on their property is recognized and emphasized as a key element in combating graffiti crime.

F. It is the purpose of this Chapter to provide for a City sponsored program for the removal of graffiti from walls, pavement, structures and other improvements on both public and private property. Towards that end, the City Council hereby deems it appropriate for the Director of Public Works, acting under the supervision of the City Administrator, to utilize City funds and designate the City employees or City contractors necessary to establish a program of effective and prompt graffiti removal by the City for all real property within the City. Subject to the required appropriation of funds, this program may utilize City Public Works employees, materials, and equipment and other City resources which may be necessary to accomplish the graffiti abatement and removal purposes of the program, particularly with respect to graffiti on publicly owned property. The program shall also be made available to property owners within the City, on a cost reimbursement basis, for the removal of graffiti from private property pursuant to a standard agreement between the property owner and the City. (Ord. 5349, 2005.)

9.66.030 Definitions.

For the purposes of this Chapter, the listed terms are defined as follows:

A. Abate, or Abatement. To properly and correctly remove graffiti or the removal of graffiti.

B. Abatement Accounting. An accounting of graffiti abatement costs by the City.

C. Director. The Director of Public Works for the City of Santa Barbara.

D. Graffiti. Any inscription, word, figure, marking or design that is marked, etched, scratched, drawn, affixed, or painted on any property, including any building, structure, fixture or other improvement, whether permanent or temporary, that was not authorized in advance by the owner of such property.

E. Graffiti Abatement Action. An administrative procedure which identifies graffiti, provides notice to the owner to abate the graffiti and provides for abatement by the City in the absence of a timely response by the property owner.

F. Graffiti Abatement Notice. Written notice informing the property owner that graffiti exists on his/her/their property and that it must be removed within three (3) days or the City will remove it.

G. Graffiti Abatement Order. An order by the Director that graffiti exists on the property and that it must be abated.

H. Graffiti Implement. An aerosol type paint container, etching cream, a felt tip marker, or any device (including a sticker) or material capable of being used to create a visible mark at least one eighth (1/8) of an inch in width, or visible from five or more feet away.

I. Property Owner. Any one of the legal owner(s), if multiple owners, or any person as shown on the latest equalized tax assessment roll(s) of the affected property. If designated in writing, the owner's authorized agent or any person who may be in possession of, or who has a right to possess such property. (Ord. 5349, 2005.)

9.66.040 Graffiti - Public Nuisance.

Pursuant to the authority of California Government Code Section 38771, graffiti, whether on public property or on private property, is hereby declared a public nuisance in the City. (Ord. 5349, 2005.)

9.66.050 Prohibition of Graffiti on Property.

It shall be unlawful for the owner of any real property within the City, whether public or private, to allow graffiti to remain in place on such property or to maintain graffiti that has been placed upon such property. (Ord. 5349, 2005.)

9.66.060 Graffiti Abatement Procedures - Property Owner's Consent.

A. Graffiti Removal by Public Works as Authorized by the Property Owner. With the prior written consent of a property owner and upon an agreement regarding any necessary reimbursement by the owner to the City, the Director may immediately remove any graffiti he or she determines to be in violation of Section 9.66.050 of this Chapter.

B. Standard Consent/Release Forms – Agreement to Pay for Abatement. In order to accomplish the purposes of this Section, the Director shall prepare and distribute to property owners within the City a standard City consent/release and reimbursement agreement (as prepared and approved by the City Attorney.) The consent/release and reimbursement agreement shall be sufficient for the purposes of authorizing graffiti abatement removal on that owner's property by work crews designated by the City for the purposes of entering the property to abate the graffiti. The agreement shall also contractually commit the property owner to reimburse the City for the graffiti abatement costs incurred.

As a pre-condition for the City's removal of graffiti, the property owner shall have provided the City with a fully-executed copy of the standard City release/consent and reimbursement agreement for each property owned by such owner(s). The prior consent/release and reimbursement agreement may be revoked or cancelled by the owner at any time by notifying the Director in writing. The standard release/consent and reimbursement agreement shall provide that the property owner agrees to be responsible to the City for the costs of graffiti abatement by the City in accordance with a standard graffiti abatement cost schedule to be made readily available by the City for review by a property owner.

After the graffiti is abated by the City, the City Finance Director will send the owner an itemized bill and an abatement accounting for the costs of the graffiti abatement. The property owner shall then pay the City the amount set forth in the abatement accounting within thirty (30) days of the date of the mailing.

C. Properties for Which the Property Owner Has Not Consented or Refuses to Consent. If the Director is otherwise unable to obtain consent from the property owner or if the property owner does not abate the graffiti voluntarily in accordance with the requirements of this Chapter, the Director may proceed with a graffiti abatement action as set forth in Section 9.66.070.

D. Graffiti on Public Property. Where property defaced by graffiti is owned by a public entity other than the City, the Director shall cause removal of the graffiti only after securing the consent of an authorized representative of the public entity that has jurisdiction over the property. However, any public entity may provide the City with a general standard consent agreement applicable to some or all of that entity's property, as determined appropriate by the public entity. (Ord. 5349, 2005.)

9.66.070 Notice of Graffiti Abatement Action.

A. Initiation of Abatement Action. Whenever the Director determines that graffiti exists in

violation of Section 9.66.050 and the Director has been unable to obtain the owner's consent to remove the graffiti in accordance with Section 9.66.060 and the property owner has failed to abate graffiti on the property, the Director may initiate a graffiti abatement action by causing a graffiti abatement notice to be served on the Owner as follows:

1. One copy of the graffiti abatement notice shall be posted in a conspicuous place upon the public street frontage side of the building or property at or near the place of the graffiti.

2. One copy of the graffiti abatement notice shall be served upon each of the following by regular mail:

a. The person, if any, in real or apparent charge and control of the premises or property involved, such as a tenant or occupant; and

b. The owner of record as listed on the last equalized County assessment roll.

B. Time for Removal - Hearing Before Director. The graffiti abatement notice shall provide the property owner three (3) calendar days from the date of the graffiti abatement notice to do one of the following: 1. to remove the graffiti, or 2. to authorize the removal of the graffiti by the Director by notifying the Director in writing that he or she has consented or consents to the graffiti abatement and will reimbursement the City for the removal costs (in accordance with Section 9.66.060, or 3. the property owner may demand a hearing before the Director regarding the abatement order.

If the property owner fails to take one of these actions within the above time period of three (3) days, the property shall thereafter be subject to abatement of the graffiti by the Director in accordance with Section 9.66.080.

If no hearing is requested or if the Owner provides the City with the required consent/release and reimbursement agreement within the three (3) day period required and if the graffiti has not been removed, then the Director may immediately remove the graffiti and bill the owner for the amount to be reimbursed. (Ord. 5349, 2005.)

9.66.080 Graffiti Abatement Action; Hearing.

A. Abatement Hearing with Director. If a property owner requests a hearing pursuant to Section 9.66.070B, the Director shall provide notice of the time and place of the hearing in accordance with the notice provisions of California Government Code Section 65094 at least seven (7) days prior to the scheduled hearing date.

At the Abatement Hearing, the owner shall be entitled to present written evidence relevant to show that his or her property does not contain graffiti. Upon the conclusion of the hearing, if the Director determines that the property contains graffiti, the Director may order that the graffiti be immediately abated. The determination of the Director at the Hearing shall be final and may not be appealed.

B. Abatement After Hearing. Upon the conclusion of an abatement hearing and before ordering abatement by City designated workers, the Director shall give written notice (a "graffiti abatement order") which notice shall be served in accordance with Section 9.66.070(A) that, unless the graffiti is removed within) two (2) calendar days from the date of the graffiti abatement order, the City shall enter upon the property and cause the removal, painting over or such other abatement of the graffiti as the Director determines appropriate.

C. Procedures for Abatement. The following procedures shall apply to actions by the Director to abate graffiti pursuant to this Section and to recover costs for abatement of graffiti on private property:

1. Abatement Action. Not sooner than the expiration of the time specified in the graffiti abatement order, the Director shall immediately implement the graffiti abatement order and utilize the City's own forces to remove the graffiti.

Thereafter, the City Finance Director, upon the written request of the Director, shall provide an abatement accounting to the owner of the costs of the abatement action on a full cost recovery basis not later than ten (10) days from the date the abatement action is completed. The abatement accounting shall include all administrative costs incurred by the Department in abating graffiti on the property. The total amount set forth in the abatement accounting shall be due and payable by the owner within 30 days from the date of the abatement accounting.

2. Lien on the Real Property. If all or any portion of the amount set forth in the abatement accounting remains unpaid by the owner after thirty (30) days of the mailing of the abatement accounting, such portion shall constitute a lien on the property which was the subject matter of the graffiti abatement action. Such a lien shall be levied and collected by the City in accordance with Section 1.25.130 of this code as if they were a fine imposed pursuant to that Section. Property owners seeking to challenge the amount of the abatement accounting may do so at the hearing authorized by Section 1.25.130. (Ord. 5349, 2005.)

9.66.090 Limitation of Liability.

By adopting this Graffiti Abatement and Removal Ordinance and in establishing a City graffiti abatement program, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Ord. 5349, 2005.)