



Meeting Date: 4/20/10

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s) _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s) _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Julie Doi, Deputy City Attorney / Cyndi Hookstra Mgmt Analyst III Agenda Item No. 0-1

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other (Specify) [Signature]

DATE: April 20, 2010

TO: City Council

FROM: Michael Henderson, General Services Superintendent
City Manager's Office General Services Division [Signature]

SUBJECT: **Anti-Graffiti Ordinance and Resolution Amending the Civil Fine Schedule for the Placement of Graffiti and the Possession of Graffiti Implements**

RECOMMENDATION

That City Council:

1. Approve the first reading by title only and subsequent adoption of an ordinance repealing and readopting sections 7-81, 7-86, 7-87, 7-88, 7-89, and 7-92 of the Oxnard City Code ("OCC"), amending section 7-82, subdivision (A) of section 7-85, and section 7-91 of the OCC, and repealing section 7-93 of the OCC regarding anti-graffiti measures.
2. Adopt a resolution reducing certain fines for the placement of graffiti and the possession of graffiti implements.
3. Approve a Special Budget Appropriation in the amount of \$10,000 for costs associated with signs required to enforce the amended OCC section 7-86, which funds are available in the Graffiti Restitution account number 101-5703-557-7446 and a new project number be established.

DISCUSSION

Graffiti Task Force ("GTF") staff has conducted an extensive review of the City's anti-graffiti measures and a review of civil fines assessed and collected for graffiti related violations. Based on this review, GTF staff determined that some of the current provisions of the OCC require revision due to changes in State law and due to different manners in which graffiti is being applied. GTF staff also believes that reducing the fine for certain graffiti related violations will result in an overall increase in the effectiveness of enforcement efforts and an increase in the amount of fines actually collected for graffiti related citations.

Anti-Graffiti Ordinance

Currently, State law regulates the possession of etching cream and aerosol paint containers in certain public areas. State law also regulates the sale of etching cream and aerosol paint containers to minors.

The proposed ordinance would prohibit the possession of certain graffiti implements in or upon any public facility, park, playground, swimming pool, beach, recreational facility, or other public building owned or operated by the City where signs forbidding such possession are displayed. In addition, the proposed ordinance would prohibit the possession of graffiti implements in or upon school property. However, it would not be unlawful for a minor to possess indelible markers while on school property if the minor is enrolled at the school and participating in a class that formally requires the use of such markers.

The proposed ordinance would also require that a vendor of graffiti implements place signs in the establishment stating that it is unlawful to sell or give certain graffiti implements to a minor and stating that it is illegal to deface real or personal property by use of certain graffiti implements. In addition, the proposed ordinance would require that a vendor of graffiti implements store such graffiti implements in a location that is locked, secure, and unavailable to the public except upon request.

Finally, the proposed ordinance includes a provision for recovering the costs of abatement from an adult or minor who has been found guilty in a criminal or juvenile proceeding of violating certain provisions of the California Penal Code. A lien may be placed against property owned by such adult or minor or against property owned by a parent or guardian of such minor.

Civil Fine Schedule

Currently, the civil fine for all graffiti related violations of the OCC is \$1,000 per violation. Based on comments received from the public during GTF meetings concerning the amount of this fine, GTF staff conducted a review of civil fines assessed and collected for graffiti related violations. This review revealed that the majority of graffiti related citations issued are for violations of OCC section 7-82, placing graffiti on the property of another.

The current fine of \$1,000 per violation does not deter graffiti vandals because it is so high that it is meaningless to the majority of individuals cited. Reducing the fine to an amount that an individual has the ability to pay but is still punitive is likely to act as a greater deterrent because cited individuals will be impacted financially. The attached resolution would decrease the civil fine for a violation of OCC section 7-82 from the existing \$1,000 for any violation to \$100 for the first violation, \$200 for a second violation committed within 12 months of the first violation, and \$500 for a violation committed within 12 months of the second violation or any subsequent violation.

Given that offenders found to be in violation of OCC section 7-82 are usually also cited for possessing graffiti implements, GTF staff recommends that the fine for possessing graffiti implements be reduced for the reasons set forth above. The attached resolution would decrease the civil fine for a violation of OCC section 7-86, possession of specified graffiti implements in designated areas, from the existing \$1,000 for any violation to \$250 for any violation.

FINANCIAL IMPACT

No additional law enforcement costs will be incurred due to the amendments to the OCC. The amount of civil fines collected for graffiti related violations as a result of the resolution is unknown at this time. The estimated cost to place the required signs in City parks and City facilities to make the amended OCC enforceable is estimated to be \$10,000 for the initial placement. The on-going sign cost due to vandalism is estimated to be \$500 per year.

Staff is asking that the \$10,000 needed to fund the sign printing for the parks and City facilities be funded from restitution payments made to the City by convicted graffiti vandals. The balance in the restitution account number 101-5703-557-7446 is \$63,319. Staff is asking that a new project be established and the funds be transferred into the project for this purpose.

The cost to businesses required to post the new signs to comply with amended OCC section 7-88 is estimated to be \$20.00 per sign. The additional cost to businesses for securing graffiti implements other than spray paint is unknown.

The City files liens against property to recover abatements costs, following successful criminal and juvenile prosecutions by the Ventura County District Attorney's Office.

Attachment #1 - Resolution

Attachment #2 – Ordinance

Attachment #3 – Special Budget Appropriation

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
OXNARD AMENDING THE FEE SCHEDULE FOR CIVIL
FINES FOR VIOLATIONS OF THE OXNARD CITY CODE

WHEREAS, Article 3 of Chapter 7 of the Oxnard City Code ("OCC") establishes civil fines for violations of the OCC, and

WHEREAS, section 7-56 of the OCC provides that the amount of the civil fines shall be adopted by resolution of the City Council.

NOW, THEREFORE, the City Council of the City of Oxnard resolves that upon the effective date of Ordinance No. _____, the civil fines, interest and penalties and implementing provisions for violations of the OCC pursuant to section 7-56 of the OCC, as it shall be amended and renumbered from time to time, shall be those specified in the Schedule of Fines attached hereto and incorporated in full herein by this reference.

PASSED and ADOPTED this ____ day of _____, 2010, by the following vote:

AYES:

NOES:

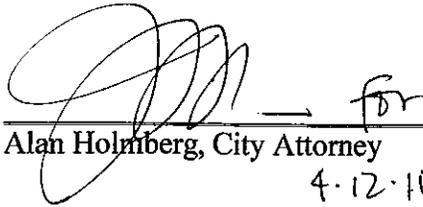
ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

APPROVED AS TO FORM:

Daniel Martinez, City Clerk



Alan Holmberg, City Attorney

4.12.10

ATTACHMENT NO. 1
PAGE 1 OF 3

SCHEDULE OF FINES

**FINES, INTEREST AND PENALTIES FOR
VIOLATIONS OF THE OXNARD CITY CODE**

A. Violators of the Oxnard City Code shall be subject to the fines listed below:

<u>Code Sections:</u>	<u>First violation:</u>	<u>Second violation within 12 months of first violation:</u>	<u>Violations occurring within 12 months of second or any subsequent violation:</u>
Section 7-147.1 and Sections 7-84(B), 7-86, 7-87, 7-88, and 7-89(A) of the Oxnard City Code	\$1,000	\$1,000	\$1,000
Section 7-147.1 of the Oxnard City Code for all fireworks other than those defined in section 12505 of the Health and Safety Code; Sections 7-148.2 and 7-148.3(A) of the Oxnard City Code	\$250	\$500	\$1,000
Section 7-86 of the Oxnard City Code	\$250	\$250	\$250
All except those listed above	\$100	\$200	\$500

B. Violators of any permit, license, or other approval (including but not limited to subdivision maps, special use permits, and zoning clearances) shall be subject to the fines listed below:

<u>Permit, license, or other approval:</u>	<u>First violation:</u>	<u>Second violation within 12 months of first violation:</u>	<u>Violations occurring within 12 months of second or any subsequent violation:</u>
All	\$100	\$200	\$500

C. Interest shall accrue upon all delinquent fines and penalties at the annual rate of ten percent.

D. A violator shall owe a \$25 late payment penalty for fines not paid within 30 days of the date such fine is due.

E. Interest and penalties may be waived by the City Manager upon a showing of hardship or upon a showing that such waiver will further the collection of a fine and resolve the violation.

ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO. __

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD
REPEALING AND READOPTING SECTIONS 7-81, 7-86, 7-87, 7-88,
7-89, AND 7-92 OF THE OXNARD CITY CODE, AMENDING SECTION
7-82, SUBDIVISION (A) OF SECTION 7-85, AND SECTION 7-91 OF
THE OXNARD CITY CODE, AND REPEALING SECTION 7-93 OF THE
OXNARD CITY CODE CONCERNING ANTI-GRAFFITI MEASURES

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The City Council of the City of Oxnard does ordain as follows:

Part 1. Section 7-81 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“SEC. 7-81. DEFINITIONS.

For purposes of this article, the following words shall have the following meanings:

(A) **ADHESIVE STICKERS** – Any piece of paper, fabric, plastic, or other material with an adhesive, paste or gummed backing, which, when applied or affixed to any surface, either creates a permanent contact or is not easily removable without the use of solvents.

(B) **AEROSOL PAINT CONTAINER** – A container, regardless of the material from which it is made, that is adapted or made for the purpose of spraying paint or other substances capable of defacing property.

(C) **DEFACEMENT** – The intentional altering of the physical shape or physical appearance of property without the prior written consent of the owner.

(D) **ETCHING CREAM** – Any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of marking, defacing, damaging, or destroying glass, plastic, wood, metal, or concrete surfaces in a manner similar to acid.

(E) **ETCHING TOOL** – Any sharp or pointed instrument that is capable of etching or marking glass, plastic, wood, metal, or concrete surfaces, including, but not limited to, picks, scribes, awls, chisels, markers, and etchers, or any masonry or glass drill bit, carbide drill bit, glass cutter, grinding stone, or acid etching solution.

(F) **GRAFFITI** – Any unauthorized inscription, word, figure, mark, adhesive sticker, or design that is written, marked, etched, scratched, drawn, painted, labeled, pasted, applied, or affixed on any real or personal property of another.

ATTACHMENT NO. 2

PAGE 1 OF 6

(G) GRAFFITI IMPLEMENT – An adhesive sticker, an aerosol paint container, etching cream, an etching tool, an indelible marker, a paint stick, a graffiti stick, a spray actuator, or any other device or instrument capable of creating graffiti.

(H) INDELIBLE MARKER – Any device containing fluid that is not soluble in water and has a writing surface for applying such fluid.

(I) MINOR – A person less than 18 years of age.

(J) PAINT STICK or GRAFFITI STICK – A device containing a solid form of paint, chalk, wax, epoxy, or other similar substance that is not soluble in water, is capable of being applied to a surface by pressure, and upon application, leaves a mark.

(K) RESPONSIBLE ADULT – A parent, legal guardian or teacher of a minor.

(L) SPRAY ACTUATOR – An object or device that is capable of being attached to an aerosol or other paint container for the purpose of spraying the substance contained therein.”

Part 2. Section 7-82 of the Oxnard City Code is hereby amended to read as follows:

“It shall be unlawful for any person to place graffiti on or apply graffiti to any public, private, or personal property located within the city without permission of the owner of the property.”

Part 3. Subdivision (A) of section 7-85 of the Oxnard City Code is hereby amended to read as follows:

“(A) Only the graffiti or other inscribed material itself may be removed unless the graffiti or other inscribed material itself cannot be removed cost effectively. In such cases, the portion of the property that was defaced may be repaired or replaced. Portions of the property that were not defaced, shall not be painted, repaired, or replaced.”

Part 4. Section 7-86 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“SEC. 7-86. PROHIBITION OF SPECIFIED GRAFFITI IMPLEMENTS IN DESIGNATED AREAS.

(A) It shall be unlawful for any person to have in his or her possession any adhesive sticker, etching tool, indelible marker, paint stick, or graffiti stick while in or upon any public facility, park, playground, swimming pool, beach, recreational facility, or other public building owned or operated by the city where signs forbidding such possession without valid authorization are displayed in a reasonable location or locations.

(B) It shall be unlawful for any minor to possess any graffiti implement while in or upon school property, grounds, facilities, buildings, or structures. The provisions of this subdivision shall not apply to the possession of indelible markers by a minor attending a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of indelible markers.”

Part 5. Section 7-87 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“SEC. 7-87. PROHIBITION OF SALE OF SPECIFIED GRAFFITI IMPLEMENTS TO MINORS.

It shall be unlawful for any person, other than a responsible person, to sell, exchange, give, loan, or otherwise furnish, or cause to permit to be sold, exchanged, given, loaned, or otherwise furnished, any etching tool, indelible marker, paint stick, graffiti stick, or spray actuator to a minor unless such minor is accompanied by a responsible adult.”

Part 6. Section –7-88 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“SEC. 7-88. REQUIRED SIGNS.

“(A) Every retail establishment selling or offering for sale etching tools, indelible markers, paint sticks, graffiti sticks, or spray actuators shall post at the location of retail sale a sign in letters at least three-eighths of an inch high and clearly visible and legible to employees and customers stating:

“It is unlawful for any person to sell or give any etching tool, indelible marker, paint stick, graffiti stick, or spray actuator to a minor who is not accompanied by a responsible adult.”

(B) Every retail establishment selling or offering for sale etching tools, indelible markers, paint sticks, graffiti sticks, or spray actuators capable of defacing property shall post in a conspicuous space a sign in letters at least three-eighths of an inch high stating:

“Any person who defaces real or personal property with an etching tool, indelible marker, paint stick, graffiti stick, or spray actuator is guilty of vandalism which is punishable by a fine, imprisonment, or both.” ”

Part 7. Section 7-89 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“SEC. 7-89. STORAGE REQUIREMENTS FOR GRAFFITI IMPLEMENTS.

(A) Every person who owns, conducts, operates, or manages a retail establishment selling or offering for sale any graffiti implement shall keep, store, and maintain such graffiti implements in a place that is locked and secure or otherwise made unavailable to the public except upon request.

(B) This section shall not apply to the selling or offering for sale of adhesive stickers.”

Part 8. Section 7-91 of the Oxnard City Code is hereby amended to read as follows:

“Any person who violates the provisions of sections 7-82, 7-84(B), 7-86, 7-87, 7-88, or 7-89(A) of this article is subject to a fine in accordance with article III of this chapter.”

Part 9. Section 7-92 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“SEC. 7-92. LIABILITY FOR COST OF GRAFFITI ABATEMENT; LIEN PROCEDURES.

(A) For purposes of this section, the following words and phrases shall have the following meanings:

(1) “Expense of abatement” includes, but is not limited to, court costs, attorney’s fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, and the law enforcement costs incurred in identifying and apprehending the person responsible for placing graffiti or other inscribed material on property of another.

(2) “Minor” means a person less than 18 years of age who falls into one of the following categories:

(a) Has confessed to, admitted to, or pled guilty or nolo contendere to a violation of section 594, 594.3, 640.5, 640.6, or 640.7 of the Cal. Penal Code;

(b) Has been convicted by final judgment of a violation of section 594, 594.3, 640.5, 640.6, or 640.7 of the Cal. Penal Code; or

(c) Has been declared a ward of the Juvenile Court pursuant to section 602 of the Cal. Welfare and Institutions Code by reason of the commission of an act prohibited by section 594, 594.3, 640.5, 640.6, or 640.7 of the Cal. Penal Code.

(3) "Person other than a minor" means a person who has confessed to, admitted to, or pled guilty or nolo contendere to a violation of section 594, 594.3, 640.5, 640.6, or 640.7 of the California Penal Code.

(B) When the city abates graffiti or other inscribed material placed on public or private property by a minor, the city manager or designee may impose a lien for the expense of abatement against the property of the minor or against the property of the parent or guardian having custody and control of said minor, and the expense of abatement shall be a personal obligation against the minor or against the parent or guardian having custody and control of the minor.

(C) When the city abates graffiti or other inscribed material placed on public or private property by a person other than a minor, the city manager or designee may impose a lien for the expense of abatement against the property of said person, and the expense of abatement shall be a personal obligation against the person.

(D) If the city manager or designee imposes a lien for the expense of abatement as set forth in subdivisions (B) or (C) of this section, the city manager or designee shall provide notice to the person who owns the property upon which the lien is being imposed prior to the recordation of the lien. The city manager or designee shall serve the notice in the same manner as a summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Cal. Code of Civil Procedure.

(E) If the person who owns the property upon which the lien is being imposed cannot be located after diligent search, the city manager or designee may serve the notice by posting a copy of the notice upon the property in a conspicuous place for a period of ten days. The city manager or designee shall also publish the notice pursuant to Cal. Code of Civil Procedure, section 6062 in a newspaper of general circulation that is published in the county in which the property is located.

(F) All liens imposed pursuant to subdivisions (B) or (C) of this section shall be recorded in the county recorder's office in the county in which the parcel of land is located and shall contain the following information:

- (1) The amount of the lien;
- (2) The name and agency on whose behalf the lien is imposed;
- (3) The date of the abatement order;
- (4) The street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed; and

(5) The name and address of the recorded owner of the parcel.

(G) If a lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subdivision (F) of this section shall be recorded by the city. A lien and the release of a lien shall be indexed in the grantor-grantee index.

(H) Any lien imposed pursuant to subdivisions (B) or (C) of this section may be satisfied through foreclosure in an action brought by the city.”

Part 10. Section 7-93 of the Oxnard City Code is hereby repealed.

Part 11. Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the city. Ordinance No. ___ was first read on _____, 20__ and finally adopted on _____, 20__ to become effective thirty days thereafter.

AYES:

NOES:

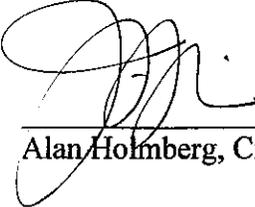
ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney
for
4-12-10

ATTACHMENT NO. 2
PAGE 5 OF 6

CITY OF OXNARD

REQUEST FOR SPECIAL BUDGET APPROPRIATION

To the City Manager:

9-Apr-10

Request is hereby made for an appropriation total of

\$10,000

Reason for appropriation: *To appropriate graffiti restitution revenue into a project to fund the printing of the required signs for the City parks and facilities.*

<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
General Fund 101	101-5703-557-7446 Graffiti Restitution Payments	-10,000
General Fund 101	101-5703-805-8104 Supplies-Shop and Field	10,000
	Project # ??	

Total 0

Net Effect on General Fund Balance 0



Division Manager

COUNCIL APPROVAL:

REQUIRED
 NOT REQUIRED



Director of Finance

Disposition	Approved _____
Transfer by Journal Voucher _____	Rejected _____

ATTACHMENT NO. 3
PAGE 1 OF 1

City Manager