



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Graffiti Prohibitions

DATE: June 23, 2005

RECOMMENDATION

- a) Approval of an ordinance amending Title 9 of the San Jose Municipal Code by adding Chapter 9.57 prohibiting the maintenance of graffiti upon real property and personal property thereon and prohibiting the maintenance of graffiti upon motor vehicles, boats and trailers parked on public streets; and amending Chapter 17.72 of Title 17 by repealing Section 17.72.220 and amending Sections 17.72.520 and 17.72.555 of Chapter 17.72 of Title 17 of the Code to make conforming changes.
- b) Adoption of a resolution amending the Administrative Schedule of Fines to establish an administrative fine for a violation of the graffiti prohibitions set forth in San Jose Municipal Code Chapter 9.57 and repealing Resolution No. 72643.

BACKGROUND

The City Council directed this Office to draft an ordinance that will provide City staff with an enforcement tool to address vehicles parked on public streets and rights of way that have been defaced with graffiti.

ANALYSIS

The proposed ordinance adds a new chapter 9.57 to the San José Municipal Code entitled "Graffiti Prohibitions," which sets forth the City Council's findings that:

- Graffiti on public and private buildings, structures, and on personal property, including motor vehicles, creates a condition of blight within the City that can result in the deterioration of property values, business opportunities, and enjoyment of life for persons using adjacent and surrounding properties; and
- The presence of graffiti is inconsistent with the City's goals of maintaining property, preventing crime, and preserving aesthetic standards.

Further, the proposed new Chapter declares that graffiti-defaced vehicles, buildings and other types of personal property constitute a public nuisance.

Under the new Chapter, a person is prohibited from maintaining or allowing graffiti to remain on a motor vehicle, boat or trailer that is parked on the street or public right of way. The ordinance also moves the provision in Chapter 17.72 of the Code, the Community Preservation Ordinance, which makes it unlawful to maintain or allow graffiti to remain on private property, including any building or structure located on the property, to the new Chapter.

Violations of the new Chapter may be enforced by administrative citation, the administrative remedies process, issuance of a misdemeanor criminal citation, administrative nuisance abatement, general nuisance abatement¹, or through a civil action. Violations of the current graffiti prohibitions under the Community Preservation Ordinance are typically enforced through the issuance of an administrative citation or through the administrative remedies process.

Code Enforcement Staff has advised this Office that persons in violation of the graffiti provisions in the Community Preservation Ordinance are given notice of the violation and ten days to correct the violation before formal enforcement action is begun. Staff recommends that the time period for commencement of an enforcement action for violations of the new Chapter be the same. Staff also advised this Office that they will investigate and respond to complaints of graffiti-defaced motor vehicles, boats and trailers parked on the street or public right of way, within 72 hours of receiving a complaint.

Staff further recommends that the administrative fine for violations of the new Chapter be set at \$250.00, \$500, and \$1,000, for the first, second and third violations in one year. These are the current fine amounts for violation of the graffiti prohibitions contained in the Community Preservation Ordinance.

PUBLIC OUTREACH

N/A.

COORDINATION

This memorandum was coordinated with the Department of Planning, Building and Code Enforcement, Code Enforcement Division. This Office will continue to work with the Code Enforcement Division with respect to implementation of the proposed new Chapter.

¹ The general abatement process set forth in Chapter 17.02 of the Code is only available to abate nuisances on private property and would not be available to abate a graffiti-defaced vehicle that is parked on the street.

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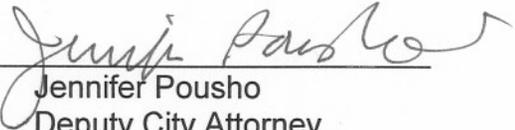
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CEQA

Exempt, PP05-138.

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City Attorney

By 
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Deputy City Attorney

cc: Del Borgsdorf
Stephen Haase
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