

DATE: September 23, 2008
TO: Mayor and City Council
FROM: City Manager
SUBJECT: Graffiti Prevention and Abatement Report

RECOMMENDATION

That Council reads and comments on this report, and provides staff with input for amendment of the Graffiti Prevention and Abatement Ordinance in Chapter 3, Article 11 of the Hayward Municipal Code., and that the Public Hearing on this item remain open until the meeting of October 7, 2008 to formally introduce Ordinance amendments.

BACKGROUND

On April 22, in a presentation before Council about the Stop Graffiti Reward Program, staff described how graffiti devalues property, invites crime, and creates the perception that Hayward is an unsafe and undesirable place to live and conduct business.

In response to these impacts, Council expressed interest in augmenting existing enforcement of graffiti removal on private property, and placing greater accountability on juvenile graffiti vandals and their parents, on property owners who fail to remove graffiti, and on those who sell graffiti implements to minors. This report will provide Council with an overview of graffiti prevention and abatement practices that have been implemented in other California cities, and may be applicable to inclusion in the Hayward Graffiti Prevention and Abatement Ordinance. These practices include stricter penalties for graffiti vandalism, greater timeliness in graffiti removal, and new graffiti prevention measures.

Penalties for Graffiti Vandalism

Research compiled by the National Council to Prevent Delinquency (NCPD) provides insight into the motivation behind graffiti vandalism, and steps that local government can take to make graffiti vandalism less prevalent and less rewarding. One finding asserts that most graffiti vandalism has little to do with art, but rather stems from larger and more complex issues.

Some graffiti relates to gang affiliation and others to the lure of notoriety. As a result, efforts by some cities to provide designated “graffiti walls” have not proven to be very effective in reducing graffiti vandalism on either private or public property. While some graffiti may appear to be more “artistic” than others, all graffiti has, at its core, a lack of respect for authority and property rights. The vandal’s selection of location is related to risk, and to the notoriety gained from having the graffiti visible in multiple places.

NCPD research also found that a hard-line response to both “first offense” juvenile and adult graffiti vandals works better than a mild approach for two reasons:

- Both adult and juvenile graffiti vandals usually commit many acts of vandalism before being caught the first time; and
- Most graffiti vandals subscribe to a value system that is at odds with that of society in general by not respecting the property rights of others, and not taking responsibility for the costs of their vandalism.

Taking these insights seriously, more and more cities have retooled their graffiti ordinances, and are working more closely with the court system to implement a more hard-line response to both juvenile and adult offenders, including:

1. Court-ordered probation or structured professional evaluation and counseling, primarily for juvenile offenders;
2. Requiring community service for both adult and juvenile offenders (with parental participation);
3. Requiring victim restitution of both adult and juvenile offenders;
4. Imposing administrative fines on both adult and juvenile offenders;
5. Making parents and guardians liable for all costs, fines, and restitution imposed on juvenile offenders; and
6. Sentencing adult offenders to serve jail time.

Timeliness of Graffiti Removal

A typical tagging incident usually takes just a few minutes. A graffiti vandal at one intersection can, in a very short time, tag a number of light poles, stops signs, traffic signal boxes, mail boxes, businesses and homes. The affected property owners include the city, utility companies, federal and state agencies, business owners and home owners. The longer the graffiti remains, the more likely the graffiti will increase and the intersection becomes a prime tagging location.

It has been found that graffiti removal within 48 hours will make a location less desirable for fulfilling the graffiti vandal’s need for notoriety. That is why an increasing number of local governments require a specific clean-up timeframe for property owners, usually by 48 hours of the appearance of graffiti or a city notice to remove. Some cities even offer property owners the option to sign a consent form allowing city staff to do graffiti removal on their property so that it is removed quickly.

Graffiti Prevention

With the basic goal being to reduce instances of graffiti, inclusion of property retrofit requirements to make prime locations and surfaces less appealing to graffiti vandals is becoming standard. Many cities are now including “ease of removal” conditions in encroachment permits and discretionary approvals like conditional use permits, variances, tentative maps, as well as new development and design applications.

The requirements include surface design changes that allow for easy graffiti removal, installing landscaping along wall areas, applying anti-graffiti material to structures, and requiring the owner to supply the City with graffiti removal material or matching paint. Some cities are also requiring owners of properties that are frequent graffiti targets (more than four times in six months) to do retrofits that reduce the attractiveness of certain structures and surfaces to graffiti vandalism.

DISCUSSION

Over the past ten years, graffiti prevention and abatement measures recommended by the International Municipal Lawyers Association (IMLA) have been incorporated into a number of graffiti ordinances. In California, the cities of Bakersfield, Concord, Davis, Los Angeles, San Diego, San Francisco, San Jose, and Stockton have included the IMLA suggestion to use California State law as the basis for graffiti enforcement, including the California Penal Code, the California Vehicle Code, and the California Government Code.

The three groups that have been the focus of more stringent ordinance provisions include:

1. Juvenile graffiti offenders and their parents/guardians ;
 2. Store owners and personnel who sell graffiti implements; and
 3. Private property owners.
- **Provisions to hold graffiti vandals and their parents or guardians accountable and subject to penalties include:**
 1. Declaring graffiti a nuisance;
 2. Requiring juvenile graffiti vandals and their parents and guardians to do mandatory community service, and to assume civil liability for all costs and damages incurred by private property owners due to graffiti vandalism;
 3. Recovering costs, incurred by the city to remove graffiti, from juvenile graffiti offenders and their parents or guardians;
 4. Making it unlawful for anyone under 18 years of age to possess certain graffiti implements in specific locations of the city, like public facilities and within certain distances of certain public infrastructure; and

5. Petitioning the court for the suspension or delay of driving privileges for persons aged 13 to 21 who are convicted of graffiti vandalism.

• **Provisions to hold store personnel and others who sell, furnish and store graffiti implements accountable include:**

1. Making it unlawful for any person or store employee to sell, purchase, furnish or convey graffiti implements like aerosol spray paint, markers of ¼ inch or more, and paint sticks to anyone under the age of 18 years in the absence of and without the permission of the minor's parent or guardian;
2. Requiring stores that sell graffiti implements to store them in locked areas in view of store employees, and to post signs alerting the public of the penalties for graffiti vandalism and for selling or furnishing graffiti implements to anyone under 18 years old in the absence of and without the permission of the minor's parent or guardian; and
3. Imposing fines and personal liability on any person, company, organization, or association who violates the sale, furnish, storage and display requirements, as well as any and all costs for graffiti removal, repair of graffiti property damage, and attorney and court costs caused by use of the sold or provided graffiti implements.

• **Provisions to hold private property owners more accountable include:**

1. Making it unlawful for private property owners and those responsible for property upkeep to allow graffiti to remain for a period longer than 48-hours;
2. Requiring property owners to remove or paint over graffiti with paint that is similar in shade and color to the surface on which the graffiti was placed;
3. Subjecting property owners, who fail to remove graffiti from their property, to administrative citations, graffiti abatement fines, mandated abatement costs, and property liens;
4. Offering property owners the option of executing and filing a consent form that authorizes the city, without notice, to enter onto their property to paint over graffiti;
5. Requiring owners of private property, that is vandalized by graffiti more than four times in six months, to retrofit their property either at the cost of the property owner and/or with city assistance, in order to reduce the attractiveness of the property surface for graffiti vandalism, and to permit more convenient or efficient graffiti removal ; and
6. Including conditions in land use encroachment permits, discretionary approvals, new development and retrofit planning and building permit applications that building materials, landscaping, lighting and other design measures be used that will discourage or impede graffiti vandalism.

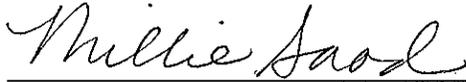
FISCAL AND ECONOMIC IMPACT

Some suggestions, like city assistance with graffiti removal and property retrofit, could increase a city's operational costs initially. However, over time, these measures are likely to result in fewer accessible or worthwhile graffiti targets and less graffiti.

PUBLIC CONTACT

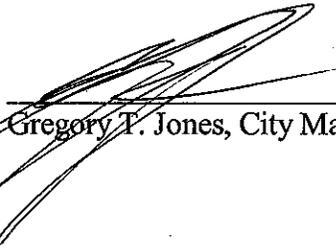
Information was relayed to 15 stores in Hayward about information in this report that could impact their operation.

Prepared by:



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