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DATE: October 28, 2008
TO: Mayor and City Council
FROM: City Manager
SUBJECT: An Ordinance Amending Chapter 3, Article 11 of the Hayward Municipal Code, the Graffiti Prevention and Abatement Ordinance

RECOMMENDATION

That Council approves and adopts the proposed amendments to the Graffiti Prevention and Abatement Ordinance in Chapter 3, Article 11 of the Hayward Municipal Code.

SUMMARY

The proposed amendments to the Graffiti Prevention and Abatement Ordinance are in response to both City Council and community concerns about the prevalence of graffiti vandalism, and the negative impacts that graffiti has on those who live, work and own businesses in Hayward.

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 requested greater accountability and penalties be placed on graffiti vandals and their parents, on property owners who fail to remove graffiti, and on those who sell graffiti implements to minors.

The current Graffiti Prevention and Abatement Ordinance in Chapter 3, Article 11 Ordinance of the Hayward Municipal Code primarily mandates private property owners to remove graffiti, and outlines the abatement penalty process for those who do not. The proposed amendments will expand the focus to include penalties on juvenile graffiti vandals and their parents and guardians; penalties on store owners, personnel and others who display, sell and furnish certain graffiti implements to juveniles; inclusion of graffiti prevention options, and stricter graffiti removal requirements on private property owners; and the addition of ease of removal and property design requirements related to graffiti abatement and prevention.

The draft ordinance also provides that those in violation of any section of the ordinance be subject to Administrative Citations, with the specific fines to be included in the City Master Fee Schedule by City Council Resolution. The general areas of enforcement included penalties for acts of graffiti vandalism; prohibition and penalties related to the sale, furnishing and storage of specific graffiti implements; and requirements for private property owners to remove graffiti from their property, and to implement specific design changes to allow for ease of graffiti removal, and reduction in surfaces likely to be graffiti targets.

I. As related to acts of graffiti vandalism, the specific amendments provide that:

1. Graffiti be specifically prohibited and deemed a nuisance;
2. The California Penal Code be applied to graffiti vandals and to their parents and guardians, including mandatory community service, and civil liability for all costs and damages incurred by private property owners related to graffiti vandalism;
3. The cost for graffiti removal by the City be recovered from juvenile graffiti vandals and their parents or guardians;
4. It be unlawful for persons 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;
5. Only a parent or guardian be allowed to purchase, on behalf of a minor child, aerosol spray paint, broad-tipped markers of ¼ inch or more, and paint sticks; and
6. The City be able to petition for the suspension or delay of driving privileges for persons aged 13 to 21 who are convicted of graffiti vandalism by a court of law.

II. As related to store personnel and others who sell, furnish and store graffiti implements, the specific amendments provide that:

1. It shall be 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. Stores that sell these items be required to store them in locked areas in view of store employees, and 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. Any person, company, organization, or association who violates the sale, furnish, storage and display requirements be fined and held personally liable for 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.

III. As related to private property owners, specific proposed amendments provide that:

1. It is unlawful for private property owners and those responsible for property upkeep to allow graffiti to remain for a period longer than 48-hours;
2. The property owner or responsible person remove or paint over the graffiti with paint that is similar in shade and color to the surface on which the graffiti was placed;
3. Property owners who fail to remove graffiti from their property would be subject to administrative citations, graffiti abatement fines, mandated abatement costs, and liens against their property;
4. Property owners be given the option of executing and filing with the City a consent form that authorizes the City, without notice, to enter onto their property to paint over graffiti indefinitely until the consent is withdrawn in writing;
5. Owners of private property that is vandalized by graffiti more than four times in six months be required 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, or to permit more convenient or efficient graffiti removal ; and
6. Conditions be included 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.

DISCUSSION

Research conducted by the National Council to Prevent Delinquency (NCPD), and legislative recommendations from the International Municipal Lawyers Association (IMLA) have become the foundation for many local graffiti ordinances drafted over the past ten years. In California, the cities of Bakersfield, Concord, Davis, Los Angeles, San Diego, San Francisco, San Jose, and Stockton. All use California State law as the basis for enforcement including Sections of the California Penal Code, the California Vehicle Code, and the California Government Code.

Penalties for Graffiti Vandalism

The NCPD research provides key insights into the motivation behind graffiti vandalism, and effective steps that local government can take to make graffiti vandalism less prevalent and less rewarding, especially to minors. One key insight is that most graffiti vandalism has little to do with art, but rather stems from larger and more complex issues, some related to gang affiliation, and for others the lure of notoriety. Therefore, 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 the notoriety gained from having their tags visible in multiple places.

While the best immediate response to graffiti vandalism is prompt clean-up, that does deter graffiti vandalism long-term, other measures are needed. It has been found that a hard-line response to “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, nor taking responsibility for the costs of their vandalism.

In regard to adult offenders and juvenile offenders, the ILMA recommends a combination of the following sentencing components as part of any disposition made of a graffiti case or any agreement made with the graffiti vandal. The draft ordinance includes these components:

1. Jail time (adult offenders)
2. Court-ordered probation or structured professional evaluation and counseling (primarily juvenile offenders);
3. Required community service (both adult and juvenile offenders);
4. Victim restitution (both adult and juvenile offenders);
5. Fines (both adult and juvenile offenders); and
6. Parental/Guardian liability (juvenile offenders)

Requiring parents and guardians of graffiti vandals to pay costs related to City and property owner graffiti abatement, to participate in required community service, and to be fined through Administrative Citation has proven to be an effective approach in addressing juvenile graffiti vandalism.

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 could include the city, utility companies, federal and state agencies, business owners and home owners. The longer the graffiti remains, the more likely it will increase and become a prime tagging location. It has been shown that removal of graffiti within 48 hours will make a location less desirable for fulfilling the vandal's need for notoriety. That is why an increasing number of local governments contain a specific clean-up time requirement for property owners, usually within 48 hours of the appearance of graffiti or City notice to remove.

Graffiti Prevention Provisions

With the basic goal to reduce instances of graffiti, ordinance amendments are included to address ways to reduce the number of locations that are attractive graffiti targets. The underlying goal is to reduce graffiti by making prime locations and surfaces less appealing as graffiti targets.

One approach is to include "ease of removal" conditions in encroachment permits and discretionary approvals like conditional use permits, variances, tentative maps, or other similar land use entitlements, development or new design applications. These include requirements for surface design changes allowing for easy graffiti removal, installing landscaping on wall areas, applying anti-graffiti material to structures, supplying the City with graffiti removal material or matching paint, requiring prompt graffiti removal, and granting of right-of-entry permission to the City allowing for prompt graffiti clean up after a 48-hour posted notice.

Also included are requirements for owners of properties that are frequent graffiti targets (defaced with graffiti more than four times in six months) to be ordered through an abatement process to have the property retrofitted, either by the owner or the City, to reduce the attractiveness of structure surfaces for graffiti vandalism.

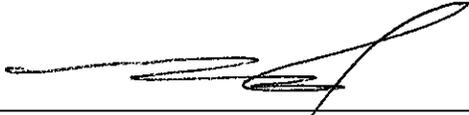
FISCAL AND ECONOMIC IMPACT

The extent to which graffiti is not allowed to remain on a surface, and the extent to which structures are no longer accessible graffiti targets are key factors in reducing graffiti vandalism overall. While the adoption of the amendments in Section 3-11.12(d) and Section 3-11.22, property owners allowing City graffiti removal on their properties, may increase some City operational costs initially, timely abatement will eventually discourage repeat tagging. The key consideration would always be whether or not the proposed retrofit is necessary and reasonable.

PUBLIC CONTACT

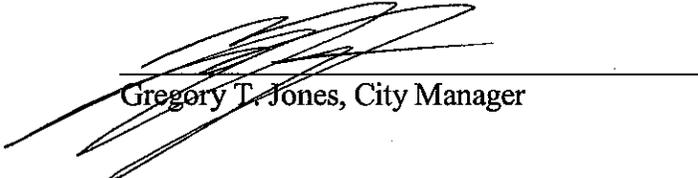
The public notice for this agenda item was mailed to 15 stores in Hayward that may be impacted by amendments to the Graffiti Abatement Ordinance related to the sale and conveyance of aerosol spray paint, markers of greater than ¼ inch, and paint sticks.

Recommended by:



Fran David, Assistant City Manager

Approved by:



Gregory T. Jones, City Manager

Exhibit A: Draft Amendment to the Graffiti Prevention and Abatement Ordinance

DRAFT

HAYWARD CITY COUNCIL

Ordinance No. _____

mal
10/24/08

ORDINANCE REPEALING AND REPLACING ARTICLE 11
OF CHAPTER 3 OF THE HAYWARD MUNICIPAL CODE
RELATING TO GRAFFITI PREVENTION AND ABATEMENT

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD
DOES ORDAIN AS FOLLOWS:

Section 1. Upon the adoption of this ordinance, Article 11 of Chapter 3, of the Hayward
Municipal Code is hereby repealed and, in substitution thereof, a new Article 11 of Chapter 3
of the Hayward Municipal Code is hereby enacted to read in full as follows:

ARTICLE 11

GRAFFITI PREVENTION AND ABATEMENT

SEC. 3-11.00 TITLE. This Article shall be known as the 'Graffiti Prevention and
Abatement Ordinance.'

SEC. 3-11.01 PURPOSES 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 that the laws protecting public and private property can be disregarded with impunity. This perception fosters disrespect for the law that leads to an increase in crime; degrades the community, and leads to urban blight; is detrimental to property values, business opportunities, and the enjoyment of life; and is inconsistent with the City's neighborhood services goals and aesthetic standards.
- b. Graffiti results in visual pollution and is hereby deemed a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents and to prevent the further spread of graffiti.
- c. It is the purpose of this Article to establish procedures and adopt regulations whereby all public and private property within the City may be maintained free of graffiti.

SEC.3-11.02 DEFINITIONS. For purposes of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended.

- a. 'Abate' shall mean the removal or covering over of graffiti by such means and in such manner and to such an extent as is necessary in the interest of the general health, safety, and welfare of the community as determined by the Enforcement Officer.
- b. 'Demand for Payment' shall mean an invoice for graffiti abatement costs prepared by the appropriate City representative containing a description of defaced property, a summary of graffiti abatement actions performed, a listing of the expenses of abatement, and the basis for determining the identity of the graffiti offender.
- c. 'Enforcement Officer' shall mean the employee or official appointed and designated by the City Manager to administer the provisions of this Article.
- d. 'Expenses of Abatement' shall include, but not be limited to, court costs, attorney's fees, costs of removal of the graffiti including materials, costs of repair and replacement of defaced property, the costs of administering and monitoring the participation of a graffiti offender in a graffiti abatement program, and the law enforcement costs incurred by the City in identifying and apprehending the graffiti offender.
- e. 'Graffiti' means any unauthorized inscription of a word, symbol, or design, which is marked, etched, scratched, drawn, or painted on any structural component of any public or private building, structure, facility, property, vehicle, or other item.
- f. 'Graffiti Implement' shall mean any pressurized container, broad-tipped marker of one-quarter inch or more, paint stick, graffiti stick, or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.
- g. 'Graffiti Offender' shall mean a minor or other person who has confessed to, admitted to, pled guilty or *nolo contendere* to, or been convicted of, a violation of Penal Code section 594, 594.3, 640.5 640.6, or 640.7.
- h. 'Owner' shall mean any person so designated on the last equalized assessment roll, as well as any person having or claiming to have any legal or equitable interest in privately owned real property.
- i. 'Pressurized container' shall mean any can, bottle, spray device, or other mechanism designed to propel liquid or similar material, which contains ink, paint, chalk, dye, or other similar substance that is expelled under pressure, through the use of aerosol devices, pumps or similar propulsion devices.
- j. 'Property' shall mean real or personal property, whether publicly or privately owned, within the City limits.

- k. 'Responsible Person' shall mean any person or entity, other than the Owner, who has primary responsibility for the repair or maintenance of the property.
- l. 'Structure' shall mean the same as defined in the Uniform Building Code.
- m. 'Surface' shall mean the exposed area of any object, including, but not limited to, walls, fences, sidewalks, curbs, street light poles, utility poles, utility boxes, trees, and vegetation, signs and trash receptacles.

SEC. 3-11.03 GRAFFITI PROHIBITION.

- a. It is hereby declared that graffiti is a public and private nuisance and is subject to abatement as set forth in this Article.
- b. It shall be unlawful for any person to apply graffiti upon any publicly or privately owned property, structure, or surface within the City of Hayward.
- c. All personal property, including but not limited to, automobiles, motorcycles, and bicycles, used in violating this Article is declared a nuisance, which nuisance shall be enjoined and abated. Any person or his or her servant, agent, or employee, who owns, leases, conducts, or maintains any such personal property used to violate any of the provisions set forth in this Article is guilty of a nuisance.
- d. It shall be unlawful for any person who owns or is otherwise in control of any real property within the City limits to permit or allow any graffiti to be placed upon or remain upon any surface located on such property and visible to the public for longer than 48 hours.

SEC. 3-11.04 GRAFFITI VANDALISM PENALTY PROVISIONS.

- a. It is the intent of the City that, pursuant to California Penal Code Section 640.6(a), all acts of graffiti vandalism occurring within the City limits shall be prosecuted as misdemeanors pursuant to this Article or California Penal Code section 594 *et seq.* Accordingly, any violation of Section 3-11.03(b) shall be a misdemeanor as provided by California Penal Code Section 594 and/or any other provision of law.
- b. In addition to all other remedies or penalties provided by law, violation of any of the sections contained in this Article are punishable by Administrative Citation as set forth in Chapter 1, Article 7 of the Hayward Municipal Code.
- c. If the graffiti offender is a minor, the City, pursuant to California Penal Code section 594, may request that the Court order the defendant and his or her parents or guardians to keep the damaged property or other specified property in the City free of graffiti for up to one year, in addition to any punishment imposed in California Penal Code Section 594(b).

SEC 3-11.05 POSSESSION OF GRAFFITI IMPLEMENTS BY MINORS.

It shall be unlawful for any person under the age of eighteen (18) years to have in his or her possession any graffiti implement capable of defacing property with a permanent, indelible, or waterproof substance while on private property without the consent of the Owner, or while on public property, unless the minor is using the graffiti implement under the supervision of a parent, teacher, or legal guardian.

SEC 3-11.06 DISPLAY, STORAGE, SALE, AND CONVEYANCE OF GRAFFITI IMPLEMENTS TO MINORS.

- a. It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or to permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to anyone under the age of eighteen (18) years in the absence of and without the written consent of the parent or legal guardian.
- b. Before selling any graffiti implement capable of defacing property with a permanent, indelible, or waterproof substance, a retailer must first obtain bona fide evidence of age and identity. As used herein, the phrase "bona fide evidence of age and identity" shall mean any document evidencing the age and identity of any individual that has been issued by a federal, state, or local governmental entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the federal selective service act, or an identification card issued to a member of the armed forces.
- c. Every person who owns, conducts, operates, or manages a retail commercial establishment selling graffiti implements capable of defacing property with a permanent, indelible, or waterproof substance shall restrict access to all those items described by placing all such items in a locked counter, locked cabinet, or other locked storage facility, in the line of sight of one or more work stations that are normally continuously occupied during business hours, so that access to them and/or their contents can only be gained by employees, agents, or other authorized representatives.
- d. Any person, organization, company, firm, or association engaged in the retail sale of graffiti implements capable of defacing property with a permanent, indelible, or waterproof substance must place a sign at the point of retail sale that is clearly visible and legible to employees and customers and which states as follows:

GRAFFITI IS AGAINST THE LAW. ANY PERSON WHO PUTS GRAFFITI ON ANY PRIVATE OR PUBLIC PROPERTY IN THE CITY OF HAYWARD IS GUILTY OF A CRIME PUNISHABLE BY A FINE AND/OR IMPRISONMENT.

WARNING: IT IS ILLEGAL TO SELL, DISTRIBUTE, FURNISH, OR CONVEY PRESSURIZED CONTAINERS OF PAINT, PAINT STICKS, AND/OR MARKERS OF ONE-QUARTER INCH OR MORE TO ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS OR FOR ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS TO POSSESS OR PURCHASE THOSE ITEMS. IT IS ILLEGAL IF YOU ARE EIGHTEEN YEARS OF AGE OR OLDER TO PURCHASE AEROSOL PAINT, PAINT STICKS, AND/OR MARKERS OF ONE-QUARTER INCH OR MORE FOR A PERSON UNDER EIGHTEEN YEARS OF AGE, IF YOU ARE NOT SUCH PERSON'S PARENT OR GUARDIAN. FINES MAY BE IMPOSED FOR VIOLATION OF THESE PROVISIONS AS AUTHORIZED BY RESOLUTION OF THE HAYWARD CITY COUNCIL

SECTION 3-11.07 CIVIL RESPONSIBILITY FOR DAMAGES FOR WRONGFUL SALE, DISPLAY, AND STORAGE.

Any person, organization, company, firm, or association who sells, displays, or stores any graffiti implements in violation of the provisions of this Article shall, to the extent permitted by law, be personally liable for any and all costs incurred by any party in connection with the removal of graffiti, or the repair of any property containing graffiti, caused by any person using such graffiti implement in violation of the provisions of California Penal Code Section 594, and for all attorney's fees and court costs incurred in connection with the civil prosecution of any claim for damages.

SEC 3-11.08 SUSPENSION OR DELAY OF DRIVING PRIVILEGES.

For each conviction of a person aged 13 to 21 for a violation of Section 3-11.03(b) or any State law pertaining to vandalism of property with a graffiti implement, the City may petition the sentencing court to suspend existing driving privileges or delay issuance of driving privileges in accordance with California Vehicle Code section 13202.6.

SEC 3-11.09 PARENTAL CIVIL LIABILITY.

In addition to any other remedy provided herein, any parent or legal guardian, whose minor child commits any act of willful misconduct that results in the defacement of public or private property, shall be personally liable for any and all costs to any person or business incurred in connection with the removal of graffiti caused by the minor child, and for all law enforcement costs, City costs, attorney's fees, and court costs incurred in connection with any civil action caused by the misconduct. The parent or legal guardian shall be jointly and severally liable with the minor child for any damages resulting from the willful misconduct in accordance with California Civil Code Section 1714.1(b).

SEC 3-11.10 RECOVERY OF CITY FUNDS FROM GRAFFITI OFFENDERS.

- a. Whenever the City becomes aware, or is notified and determines, that graffiti is located on public or privately-owned property within the City, the City shall be authorized to use public funds for the removal of the graffiti or to replace any property defaced with graffiti that cannot be removed cost effectively. Public funds shall be used to repair or replace only those portions of the property that were defaced with graffiti. The removal, repair, or replacement of public property defaced with graffiti shall be performed only after securing the consent of the public entity having jurisdiction over the property. The removal, repair, or replacement of privately-owned property defaced with graffiti shall be performed only after securing the consent of the Owner or Responsible Person.
- b. Once the City has expended funds to remove graffiti, regardless of location, which was caused by a graffiti offender, the City may recover the funds in accordance with the following procedures:
 1. The Enforcement Officer shall serve a Demand for Payment upon the graffiti offender, ordering payment of the City's expenses of abatement to be made to the City within ten (10) days. If the graffiti offender is a minor, then the Enforcement Officer shall serve the Demand for Payment upon the parent or guardian having custody of the minor.
 2. The Demand for Payment shall be served in the same manner as a summons in a civil action pursuant to the California Code of Civil Procedure sections 415.50 *et seq.* If the graffiti offender, or the parent or guardian of a minor graffiti offender, cannot be found after diligent search, the Demand for Payment may be served by posting a copy of the Demand for Payment upon the property owned by the graffiti offender or the property of the parent or guardian of a minor graffiti offender, in a conspicuous place for a period of 10 days and by publishing the Demand for Payment in a newspaper of general circulation in the county in which the property is located pursuant to Government Code section 6062.
 3. If the graffiti offender is a minor, then the parent or guardian having custody of the minor shall be jointly and severally liable with the graffiti offender for the expenses of abatement. The expenses of abatement shall become a lien against the property, as well as a personal obligation, of the graffiti offender and the parent or guardian of a minor graffiti offender, in accordance with the provisions of Sections 3-11.15 through 3-11.18 below.
- c. A graffiti offender, or the parent or guardian having custody of the minor graffiti offender, may request an administrative hearing on the Demand for Payment by submitting a written request to the Enforcement Officer within 10 days of service of the Demand for Payment. The administrative hearing shall be conducted as set forth in Section 3-11.13 below.

SEC. 3-11.11 REMOVAL OF GRAFFITI.

- a. As described in 3-11-03(d), it shall be unlawful for any Responsible Person to permit property that has been defaced with graffiti to remain defaced for a period longer than 48 hours after notification by the City of the existence of graffiti on the property that must be removed. Property shall be considered no longer defaced when the graffiti is removed or the defaced area is covered by paint that is similar in shade, color, and texture to the surface upon which the graffiti is placed.
- b. Whenever the Enforcement Officer determines that graffiti exists in violation of Section 3-11.03(d), and he or she is unable or unsuccessful in working with the Owner or Responsible Person to remove or cover the graffiti, the Enforcement Officer may initiate a graffiti abatement action by causing a Graffiti Abatement Notice to be served on the Owner and, at the City's option, on the Responsible Person, notifying the Owner and the Responsible Person of the violation of this Article and directing the Owner and the Responsible Person to abate the violation within 48 hours from the date of notice or appear before the Enforcement Officer to show cause why the violation should not be abated by the City at the expense of the Owner and the Responsible Person.
- c. The notice shall be substantially in the following form:

**NOTICE TO REMOVE GRAFFITI
(NAME AND ADDRESS OF PERSON NOTIFIED)**

As owner, agent, lessee, or other person occupying or having charge or control of the building, lot, or premises at (address), you are hereby notified that the undersigned has determined that graffiti exists upon the above described premises in violation of Hayward Municipal Code Section 3-11.03(d). You are hereby notified that by (date), you must abate the above condition to the satisfaction of the undersigned, or request an administrative hearing to show cause, if any you have, as to why the condition should not be abated by the City and the expenses thereof charged to your property; and if not paid thereafter, made a lien upon the real property described above. You may request an administrative hearing by calling the undersigned at _____ (phone number). Abatement is to be accomplished in the following manner:

Dated: _____
By _____

SEC. 3-11.12 MANNER OF GIVING ABATEMENT NOTICE.

- a. A copy of the notice provided for in section 3-11.11 shall be served upon the Owner, as the Owner's last name and address appear on the last equalized assessment roll of the County of Alameda, or the supplemental roll, whichever is more current.

- b. The Graffiti Abatement Notice shall be served in the same manner as a summons in a civil action pursuant to the California Code of Civil Procedure sections 415.50 *et seq.* If the Owner cannot be found after diligent search, the Graffiti Abatement Notice may be served by posting a copy of the notice upon the property in a conspicuous place for a period of 10 days and publishing the notice in a newspaper of general circulation in the county in which the property is located pursuant to Government Code section 6062.

SEC.3-11.13 ADMINISTRATIVE HEARING

At the time fixed for the administrative hearing, if one is requested, the Hearing Officer shall consider all relevant evidence, objections, or protests offered on behalf of the Owner or Responsible Person that tend to show why the condition should not be abated and the expense thereof charged to the Owner or Responsible Person as a civil debt, and if not paid thereafter made a lien upon the premises. The Hearing Officer may also consider rebuttal evidence offered by the City. The hearing may be continued from time to time. If at the conclusion of the hearing, the Hearing Officer is satisfied that the condition exists and concludes that it should be abated, s/he shall so advise the persons attending the hearing, either orally or in writing.

SEC. 3-11.14 ABATEMENT BY CITY

If the nuisance is not abated as ordered within the abatement period, the Enforcement Officer shall cause it to be abated by City employees or private contractors as the City may authorize to enter upon the premises. The cost, including administrative expenses, of abating the nuisance shall be billed to the Owner and shall become due and payable 30 days thereafter. The term 'administrative expense' shall include, but not be limited to the following: personnel costs, both direct and indirect; costs incurred in documenting the nuisance; the actual expenses and costs of the City in the preparation and dissemination of notices, specifications, and contracts, and in inspecting the work; and the costs of printing and mailing the notices required hereunder.

SEC. 3-11.15 ACCOUNT AND REPORT OF COSTS

The Enforcement Officer shall keep an account of the cost of abating the nuisance which account shall be included in an annual report and assessment list to the City Council, which shall be filed with the City Clerk. The assessment list shall refer to each separate lot or parcel of land by a description that is sufficient to identify the lot or parcel together with the expense proposed to be assessed against each separate lot or parcel of land.

SEC. 3-11.16 NOTICE OF REPORT

The City Clerk shall post a copy of the report and assessment list on the bulletin board designated for the posting of agendas for City Council meetings together with a notice of filing thereof and of the time and place it will be submitted to the City Council for hearing and confirmation, notifying property owners that they may appear at such time and place and object to any matter contained therein. A like notice shall also be published twice in a newspaper of general circulation that is published and circulated within the City. The posting and first publication of the notice shall be made and completed at least 10 days before the time the report is considered by the City Council.

SEC. 3-11.17 CONFIRMATION HEARING.

At the time and place fixed for receiving and considering the annual report, the City Council shall hear the same together with any objections that may be raised by any person liable to be assessed for the work of abating the nuisance; the Enforcement Officer shall attend the meeting with his or her record thereof, and upon the hearing, the Council may make the modifications in the proposed assessments as it may deem necessary, after which the report and assessment list shall be confirmed by resolution. The amount of the cost of abating the nuisance, including administrative expenses, shall constitute special assessments against the respective lots or parcels of land and after being confirmed shall constitute a lien on the property for the amount of the assessments until paid.

SEC. 3-11.18 COLLECTION ON TAX ROLL

After confirmation of the report, a copy shall be given to the City Director of Finance who may receive the amount due on the abatement cost and issue receipts at any time after the confirmation and until a list of unpaid assessments shall have been sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reports shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection, and enforcement of City taxes are hereby made applicable to such special assessment, and the lien of the assessment shall have priority of the taxes with which it is collected.

SEC. 3-11.19 STAY OF PROCEEDINGS DURING CRIMINAL PROSECUTION.

In any case in which a criminal prosecution is pending or is about to be instituted for violation of Penal Code sections 594 and 640.6, or of any other law that authorizes a court to sentence a criminal defendant or ward of the court to remove graffiti placed on property by that person, the City may suspend abatement actions under this Article. In such a case, the abatement action shall be suspended only in connection with any property upon which the defendant or ward is charged with placing graffiti, and only until such time as he or she is sentenced. This provision shall not prohibit an Owner or Responsible Party from removing graffiti from his or her property during such time as the criminal proceeding is pending.

SEC. 3-11.20 PROCEDURE NOT EXCLUSIVE.

The procedures provided in the provisions of this Article shall be cumulative and in addition to any other procedures provided in ordinances of this City or by state law for the prevention and abatement of any of the conditions described herein and abatement hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such condition.

SEC 3-11.21 EASE OF REMOVAL PROVISIONS

- a. Encroachment permits issued by the City may, among other requirements, be conditioned on any or all of the following:
 1. The permittee applying anti-graffiti material to the encroaching object or structure of a type and nature which is acceptable to the City Manager, or his or her designee;

2. The immediate removal by the permittee of any graffiti;
 3. The right of the City to remove graffiti or to paint the encroaching object or structure;
 4. The permittee providing the City with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object or structure containing graffiti.
- b. In imposing conditions upon conditional use permits, variances, tentative maps, or other similar land use entitlements or development or design applications, the City may impose graffiti removal requirements or any or all of the following conditions, or other similar or related conditions:
1. Applicant may be required to apply an anti-graffiti material and provide a landscape design of a type and nature which is acceptable to the City Manager, or his or her designee, to such of the publicly viewable surfaces to be constructed on the site deemed by the City Manager, or his or her designee, to be likely to attract graffiti (“graffiti attracting surfaces”);
 2. Applicant shall grant, in writing, the right of entry over and access to such parcels, upon forty-eight (48) hours posted notice, by authorized City employees or agents, for the purpose of removing or painting over graffiti on graffiti attracting surfaces previously designated by the City Manager, or his or her designee. Such grant shall be made an express condition of approval and shall be deemed to run with the land;
 3. Applicant, and any and all successors in interest, shall, for a specified period of years after approval, provide the City with sufficient matching paint and/or anti-graffiti material on demand for use in the painting over or removal of designated graffiti attracting surfaces;
 4. Persons applying for subdivision maps shall, as a part of any conditions, covenants and restrictions, covenant, which covenant shall run with the land, in a form satisfactory to the City, that the owners of the lots shall immediately remove any graffiti placed on publicly viewable trees, rocks, and structures thereon to the City’s satisfaction.

SEC 3-11.22 GRAFFITI PREVENTION PROVISIONS

- a. Any applicant for design review approval, conditional use permit, temporary activity permit, land development permit, site plan approval, planned development approval, development agreement, or other form of development or building permit shall, to the extent deemed feasible by the City Manager, or his or her designee, have designed any building structures visible from any public or quasi-public place in such a manner as to consider prevention of graffiti, including, but not limited to, the following:
 1. Use of approved additional lighting;
 2. Use of nonsolid fencing, where permitted;

3. Use of environmentally friendly landscaping designed to cover large expansive walls,;
 4. Use of approved and permitted architectural design to break up long continuous walls or solid areas.
- b. The following preventive measures may be ordered after providing adequate notice and the opportunity for an abatement hearing pursuant to this Article. No graffiti need currently reside on the property before instituting such a proceeding. The City must only show that the surface of a structure has been defaced more than four times in six months and that the proposed retrofit is necessary and reasonable.
1. Any surface of a structure on a parcel of land that has been defaced with graffiti more than four times in six months, or the immediate area surrounding said surface, shall be required to be retrofitted, at the cost of the Owner of said lot, with such features or qualities as may be established by the City as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof.
 2. The owner of the property on which is located a surface of a structure that has been defaced with graffiti more than four times in six months, or the immediate area surrounding said surface, shall permit the City to enter upon and make such modifications thereto, at the City's cost, which reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof."

Section 2. SEVERABILITY

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Article, which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2008, by Council Member__.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ____ day of _____, 2008, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:
Mayor of the City of Hayward

DATE:

ATTEST:
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward