ITEM 9.D.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

FROM: **David A. Bobardt, Community Development Director**
By: David Lasher, Management Analyst

DATE: **January 25, 2010 (CC Meeting of 2/16/2011)**

SUBJECT: **Consider an Ordinance Replacing in its Entirety Chapter 8.14, Graffiti, of Title 8, Health and Safety of the Moorpark Municipal Code**

BACKGROUND/DISCUSSION

On June 16, 2010, the City Council requested recommendations from the Community and Economic Development Standing Committee on potential amendments to the City's graffiti regulations in response to increased incidents of graffiti in the City. The Community and Economic Development Standing Committee (Councilmembers Mikos and Pollock) considered draft amendments to the City's graffiti regulations on November 17, 2010 and directed staff to submit these amendments to the City Council for consideration. The amendments in the attached draft ordinance would:

- Update language in the code to address new forms of graffiti, including slap tags and etching cream;
- Clarify that remedies could involve any combination of civil prosecution, administrative nuisance abatement, and criminal prosecution;
- Allow, at the discretion of the City Manager, for minors to provide community service in lieu of civil fines or penalties;
- Increase the maximum parental civil liability from $10,000 to the maximum amount allowable under State law (currently $25,000); and
- Require that property owners use matching paint when painting out graffiti.

The attached draft ordinance has been reviewed and approved by the City Attorney. The legislative format in Exhibit A of the attached ordinance is provided for ease of reading and will not be shown in the final ordinance when adopted.

FISCAL IMPACT

The proposed ordinance would allow for increased cost recovery associated with graffiti remediation.

STAFF RECOMMENDATION

1. Introduce Ordinance No. ____ for first reading, waive full reading, and schedule second reading and adoption for March 2, 2011.

Attachment:

1. Draft ordinance

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, REPLACING IN ITS ENTIRETY CHAPTER 8.14, GRAFFITI, OF TITLE 8, HEALTH AND SAFETY OF THE MOORPARK MUNICIPAL CODE

WHEREAS, on June 16, 2010, the City Council directed the Community and Economic Development Standing Committee to review and provide direction on Chapter 8.14, Graffiti, of Title 8, Health And Safety, of The Moorpark Municipal Code; and

WHEREAS, on November 17, 2010, the Community and Economic Development Standing Committee reviewed draft revisions to Chapter 8.14, Graffiti, of the Moorpark Municipal Code, and directed staff to submit the draft revisions to the City Council for consideration; and

WHEREAS, the City Council concurs with the Community Development Director's determination that adoption of this ordinance is exempt from the provisions of the California Environmental Quality Act by the general rule that CEQA only applies to projects that may have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Chapter 8.14, Graffiti, of Title 8 Health and Safety, of the Moorpark Municipal Code is hereby replaced in its entirety, as shown in Exhibit A.

SECTION 2. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 3. This Ordinance shall become effective thirty (30) days after its passage and adoption.

CC ATTACHMENT 1

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this ____ day of March, 2010.

_____
Janice S. Parvin, Mayor

ATTEST:

_____
Maureen Benson, City Clerk

Exhibit A: Amendments to Chapter 8.14 of the Moorpark Municipal Code

EXHIBIT A

Title 8 Health and Safety
Chapter 8.14 Graffiti

8.14.010 Purpose.
8.14.020 Definitions.
8.14.030 Unlawful to apply graffiti.
8.14.040 ~~Civil Debt~~ Remedies.
8.14.050 Furnishing graffiti implement to minors prohibited.
8.14.060 Possession of graffiti implement by minors.
8.14.070 Parental civil liability.
8.14.080 Possession of graffiti implements in public places.
8.14.090 School exception for graffiti implements.
8.14.100 Restriction on storage of graffiti implements.
8.14.110 Sign required.
8.14.120 Reward.
8.14.130 Nuisance.
8.14.140 Prohibition against maintaining graffiti on private property.
8.14.150 Expenditure of public funds.

8.14.010 Purpose.

The purpose of this chapter is to reduce and eliminate incidents of graffiti and to provide for the prompt abatement of graffiti from public and private properties in the city and to regulate the sale and possession of materials used in acts of graffiti.

The city council finds that unwanted graffiti on public and private properties is inconsistent with the city's aesthetic standards, and unless it is quickly removed from public and private properties, other properties soon become the target of graffiti. Graffiti on public and private properties encourages other acts of malicious vandalism, and depreciates the value of the adjacent and surrounding properties. Further, the city finds and determines that graffiti is obnoxious and a public nuisance, affecting the health, safety, and public welfare of the city's residents. The existence of graffiti tends to breed community discontentment and criminal activity. The unlawful placement of graffiti on public and private properties is often committed by ~~persons twenty one (21) years of age and under~~minors using aerosol and pressurized containers of paint, broad-tipped markers and pens, ~~and~~ glass etching tools, etching cream, and slap tags. The public's interest, convenience and necessity require the adoption and implementation of the provisions of this chapter.

8.14.020 Definitions.

Unless the context otherwise requires, the definitions in this section shall govern the construction of this chapter.

"Aerosol paint container" means any aerosol or pressurized container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint, or other substance capable of defacing property.

"Etching Cream" means any caustic cream, gel, liquid, or solution capable, by means of chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.

"Glass etching tool" means any etching tool or glass cutter.

"Graffiti" means any unauthorized inscription, word, figure, character or design that is marked, etched, scratched, drawn, affixed by a slap tag, or painted on any structural component of any building, structure, post, pole, or other facility regardless of the nature of the material of that structural component.

"Graffiti implement" means an aerosol paint container, an indelible marker, ~~or~~ a glass etching tool, or etching cream capable of scarring glass, metal, concrete or wood.

"Indelible marker pen" means any indelible marker, felt tip marker or similar implement containing non-water soluble fluid and has a flat, pointed or angled writing surface of one-eighth inch (1/8") or greater.

"Minor" means a person under eighteen (18) years of age.

"Responsible adult" means a parent or legal guardian of a minor.

"Slap tag" means any material such as, but not limited to, decals, stickers, posters, or labels which may be affixed upon any structural component of any building, structure, post, pole, or other facility, which contains a substance commonly known as adhesive glue.

8.14.030 Unlawful to apply graffiti.

~~A.~~ It is ~~unlawful~~ a violation of this chapter for any person to apply graffiti to any trees or structures including, but not limited to, buildings, walls, fences, poles, signs, sidewalks, and other personal property or paved surfaces located within the city. ~~B. Any individual who is found guilty of violating this section shall pay restitution to the property owner or other person who is entitled to possession of the property upon which the graffiti was placed, in addition to other authorized penalties. If the violator is a minor, the minor's responsible adult shall be responsible for payment of such restitution in the discretion of the court in a criminal proceeding involving the minor. "Restitution" as used herein, means the recovery, in accordance with state law, of all damages~~

~~resulting from the placement of graffiti contrary to the provisions of this chapter, including, but not limited to, direct and indirect costs of the removal thereof.~~

8.14.040 ~~Civil debt~~Remedies.

A. Civil Remedies

1. Any person, responsible adult, firm, or corporation who violates any provision of this chapter shall be responsible for payment of the costs of investigation, removal of graffiti, the amount of any reward paid pursuant to section 8.14.120, and all attorneys' fees and legal costs incurred in any civil proceeding in a court of law. ~~defaces private or public property with graffiti shall be responsible to the property owner or person who is entitled to possession of the property for all damages occurring as a result of the placement of the graffiti, including, but not limited to, direct and indirect costs for the removal thereof. If graffiti is removed by the city, all costs of such removal, direct and indirect, shall be recoverable from the person who caused the graffiti. The obligations imposed pursuant to this section shall be enforceable as a civil debt.~~

2. Any person, responsible adult, firm, or corporation who violates any provision of this chapter shall be subject to fines and/or other penalties in accordance with Chapter 1.16, Administrative Citations, of the Moorpark Municipal Code. The amount of civil fines or penalties assessed pursuant to this chapter shall be established by resolution of the city council, and shall cover the costs associated with the costs of investigation, removal of graffiti, the amount of any reward paid pursuant of section 8.14.120, and all attorney's fees and legal costs incurred in any civil proceedings in a court of law.

   a. In the event a minor is assessed a civil fine or penalty, the minor may perform community service and pay city administrative fees, if any, as an alternative to paying the civil fine or penalty with prior written consent and approval from the city manager or designee. The number of community service hours required to satisfy a civil penalty shall be as specified in the resolution establishing the amount of civil fines or penalties for this chapter adopted by the city council.

   b. A responsible adult who is assessed a civil fine or penalty may also request that the minor serve the required hours of community service as described in subsection A.2.a above, and pay city administrative fees, if any, as an alternative to paying the applicable civil fine or penalty.

c. The city manager or designee shall retain the discretion to approve the community service suggested by the minor or responsible adult. Upon approval of a written community service agreement by the city manager or designee and the responsible adult, to perform community service, the minor shall complete the required community service hours within one year of approval, and shall submit proof of completion to the city manager. Failure to receive approval to perform community service or failure to complete the required hours of service shall result in imposition of the applicable civil fine or penalty, which is immediately payable. No reduction in the fine or penalty is authorized for completion of less than the required hours of community service as set forth in subsection (A)(2)(a), above.

B. Administrative Abatement. The city may pursue any violation of this chapter through the administrative abatement process pursuant to Chapter 1.12, Nuisances, of the Moorpark Municipal Code and recover all costs incurred pursuant to that chapter.

C. Criminal Penalties. Any person, firm, or corporation who violates, permits, or causes to violate any provision of this chapter, or who fails to comply with any of the requirements of this chapter, shall be guilty of a misdemeanor, punishable up to the maximum fine or imprisonment authorized under California Government Code Section 36901 and as it may be subsequently amended; or by the imposition of both such fine and imprisonment.

8.14.050 Furnishing graffiti implement to minors prohibited.

It is unlawful for any person, other than a responsible adult, or a school teacher for purposes of instruction, to knowingly sell, exchange, give, loan or in any way furnish to any minor a graffiti implement, except on the premises of a lawful business and when used for the purposes of that business.

8.14.060 Possession of graffiti implement by minors.

It is unlawful for any minor to have in his or her possession a graffiti implement while upon public or private property without the consent of the owner, lessee or operator of such property.

8.14.070 Parental civil liability.

A. Pursuant to Civil Code Section 1714.1, ~~A~~any act of willful misconduct of a minor which results in the placement of graffiti shall be imputed to the minor's responsible adult for all purposes of civil damages, including all attorney's fees and court costs incurred in connection with the civil prosecution of any such claim for damages. The responsible adult shall be jointly and severally liable with the minor for any and all civil fines, penalties, damages and costs, ~~all damage, not to exceed ten thousand dollars ($10,000.00)~~ up to the maximum amount allowable by law, for each chargeable act of the minor.

B. This section in no way limits or narrows the liability of a responsible adult for acts of a minor pursuant to Civil Code Section 1714.1, Government Code Section 53069.5, Penal Code Section 640.5 or any other applicable provision of law.

8.14.080 Possession of graffiti implements in public places.

It is unlawful for any ~~person twenty-one (21) years of age or younger~~minor to have in his or her possession a graffiti implement while in any public street, park, playground, swimming pool, recreational facility or other public place. The provision of this section shall not apply to an authorized employee of the city, a public agency, or private utility, or an authorized employee of a person under contract with the city, a public agency, or private utility in the performance of official duties that necessitate the use of a graffiti implement.

8.14.090 School exception for graffiti implements.

Notwithstanding any other provision of this chapter, it shall be lawful for any person to possess a graffiti implement while the person is attending, or traveling to or from a school at which such person is enrolled, if the person is participating in a class at such school, which has, as a class requirement, the need to use such a graffiti implement.

8.14.100 Restriction on storage of graffiti implements.

Every person who owns, conducts, operates or manages a retail commercial establishment selling graffiti implements shall store or cause such graffiti implements to be stored in an area viewable by, but not accessible to the public in the regular course of business without employee assistance, pending legal sale of such graffiti implements.

8.14.110 Sign required.

Any person who owns, conducts, operates or manages a retail commercial establishment which offers for sale or sells graffiti implements shall display at the location of retail sale of such graffiti implements a sign, in letters at least three-eighths (3/8") of an inch high, clearly visible and legible to customers which states as follows:

> IT IS UNLAWFUL FOR THIS BUSINESS TO SELL OR GIVE TO ANY INDIVIDUAL UNDER THE AGE OF EIGHTEEN YEARS ANY AEROSOL PAINT CONTAINER, INDELIBLE MARKER PEN, ETCHING CREAM, OR GLASS ETCHING TOOL.

8.14.120 Reward.

The city council may authorize the offer of rewards for information leading to the arrest and conviction of any person for a violation of any provision of this chapter. The amount of any such reward and the procedures for claiming the reward shall be established, from time to time, by the city council.

8.14.130 Nuisance.

It is declared that the existence of graffiti on any building, structure, fence or landscaping is a public nuisance, affecting the health, safety, and public welfare of the city's residents, and shall be abated as such as provided in this code.

8.14.140 Prohibition against maintaining graffiti on private property.

A. It is unlawful for the owners and/or persons in possession of property to permit graffiti or other inscribed material capable of being viewed from any public right-of-way within the city to remain on such property for more than seventy-two (72) hours after notice from the city to remove the same.

B. When paint is used to cover graffiti on private property, paint matching the original surface color of the damaged item shall be utilized.

8.14.150 Expenditure of public funds.

This city council has determined that the continued existence of graffiti on buildings, structures, fences or landscaping within the city is obnoxious and a nuisance, and has the effect of encouraging the placement of more graffiti at the same location as well as on adjacent buildings, structures, fences, landscaping or other surfaces. The prompt removal of graffiti is necessary to prevent the proliferation of graffiti. Accordingly, the city may use city funds to remove graffiti from publicly or privately owned real property within the city. At the city's discretion, such removal shall be performed by the city only after a finding by the city manager that the graffiti is located on public or privately owned permanent structures located on public or privately owned real property within the city and, if on private property, after securing the consent of the owner or other person entitled to possession of the property ~~pursuant to Section 8.14.150~~.