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AGENDA REPORT

TO: CITY COUNCIL
Public Works Committee

FROM: Barbara Parker,
City Attorney
Nancy Nadel,
Councilmember

SUBJECT: Graffiti Remedies and Penalties

DATE: November 27, 2012

COUNCIL DISTRICT: City Wide

RECOMMENDATION

Adopt an Ordinance Amending and Restating Oakland Municipal Code Chapter 8.10 To Provide Comprehensive Graffiti Enforcement Through Oakland And State Law, Establishing New Remedies Against Graffiti Violators, Providing for Restorative Justice for Graffiti Offenders, A Fund for Rewards and to Assist Graffiti Victims, and Incorporating State Law Allowing for Liens Against Property of Graffiti Offenders.

EXECUTIVE SUMMARY

City Attorney Barbara Parker and Councilmember Nancy Nadel bring this ordinance that comprehensively revises the Oakland Municipal Code on graffiti (Chapter 8.10). The revisions to Chapter 8.10 are proposed primarily to provide new remedies and penalties against persons who apply graffiti to another's property, including remedies available under state law. The current Chapter 8.10 includes only a prohibition against sales of graffiti implements to minors and abatement procedures for graffiti vandalized property; it does not include penalties and remedies against the persons committing the graffiti vandalism. City Attorney Parker and Councilmember Nadel present this revision to the OMC Graffiti Chapter as part of the City's efforts to eradicate graffiti from Oakland.

More specifically this ordinance includes the following provisions, most of which are new:

- Classifies graffiti as a public nuisance.
- Sets up administrative and civil remedies and penalties against persons applying graffiti. The penalties include administrative citations, civil penalties, treble damages, and punitive damages.

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- Parents of a minor graffiti violator can be liable for minor's graffiti.
- Permits recovery of the City's and victim's costs from the perpetrator, including costs of investigation and recovery of attorney's fees and court costs. Merchant associations or business improvement districts that remove graffiti can also recover their costs.
- Allows use of restorative justice in lieu of penalties.
- Permits the City Council to provide for rewards for identification of graffiti violators.
- Permits the City Council to set up a fund for persons and businesses who have been victimized multiple times, provided that the victim has taken affirmative steps to reduce the likelihood of graffiti.
- Adopts state law permitting the City to lien the property of graffiti offenders (after a criminal conviction).
- Requires persons or business with graffiti on their property to remove it 10 days after notice.
- Retains existing provisions prohibiting sale of graffiti implements to minors.
- Makes application of graffiti a misdemeanor, rather than an infraction.

DISCUSSION

Oakland has a severe problem with graffiti being applied to public and private property. It is a city-wide problem. Not only does it detract from the beauty and livability of our city, but it breeds disrespect for our neighborhoods, encourages more graffiti and other forms of blight and vandalism, and disrespect for the law generally. Graffiti also negatively impacts Oakland's business environment. As Oakland struggles to recover economically, graffiti hampers recovery by discouraging businesses from opening or remaining in Oakland. Many property owners and businesses tire of the cost of repeatedly removing graffiti from their properties. Councilmember Nadel has received numerous complaints from frustrated constituents who are the victims of repeated graffiti attacks.

Oakland's Municipal Code currently lacks some state authorized/allowed remedies against persons committing graffiti violations, which hampered the City's recent legal actions against graffiti vandals resulting from the Occupy Oakland protests. The principal means of enforcement under the existing ordinance is cifing violators for misdemeanors under state law when violators can be identified and arrested. However, as diminishing police resources are targeted toward more major crimes and the District Attorney's prosecution priorities are similarly oriented, criminal investigation and prosecution become less viable and ineffective without more criminal/police resources.

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For questions regarding this report, please contact Richard Illgen, Supervising Deputy City Attorney, at (510) 238-6517.

Respectfully submitted,


BARBARA J. PARKER
City Attorney

NANCY J. NADEL
Councilmember, District 3

Attachments

Ordinance Amending and Restating Oakland Municipal Code Chapter 8.10 To Provide Comprehensive Graffiti Enforcement Through Oakland And State Law, Establishing New Remedies Against Graffiti Violators, Providing for Restorative Justice for Graffiti Offenders, A Fund for Rewards and to Assist Graffiti Victims, and Incorporating State Law Allowing for Liens Against Property of Graffiti Offenders

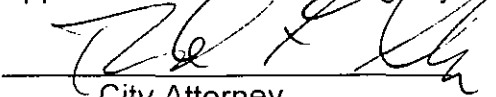
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Introduced by
Barbara Parker, City Attorney
Nancy Nadel, Councilmember

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Approved for Form and Legality


City Attorney

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

ORDINANCE AMENDING AND RESTATING OAKLAND MUNICIPAL CODE CHAPTER 8.10 TO PROVIDE COMPREHENSIVE GRAFFITI ENFORCEMENT THROUGH OAKLAND AND STATE LAW, ESTABLISHING NEW REMEDIES AGAINST GRAFFITI VIOLATORS, PROVIDING FOR RESTORATIVE JUSTICE FOR GRAFFITI OFFENDERS, A FUND FOR REWARDS AND TO ASSIST GRAFFITI VICTIMS, AND INCORPORATING STATE LAW ALLOWING FOR LIENS AGAINST PROPERTY OF GRAFFITI OFFENDERS

WHEREAS, the proliferation of graffiti has been an increasing problem in Oakland and its neighborhoods and has contributed to a perception of deterioration in Oakland;

WHEREAS, the City has had inadequate remedies for addressing persons who apply graffiti to public and private property;

WHEREAS, Oakland wishes to adopt state laws providing for additional penalties and procedures for addressing graffiti, including liens against the property of persons applying graffiti;

WHEREAS, in enforcing graffiti abatement laws, the City Council wishes to soften penalties for property owners and businesses that have been the victims of graffiti multiple times and have taken steps to reduce the potential for graffiti applied on their properties;

WHEREAS, owners or possessors of real property that has been victimized by graffiti should have additional means for recovering damages against those applying the graffiti;

WHEREAS, rather than monetarily or criminally penalizing all persons who commit graffiti offenses, particularly minors, the City Council wishes to permit the use of restorative justice in lieu of monetary or criminal penalties;

WHEREAS, the City Council wishes to establish a fund that will provide rewards leading to the apprehension of graffiti offenders and to assist victims of multiple graffiti incidents.

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Oakland Municipal Code Chapter 8.10 is hereby amended and restated as follows:

SECTION 1. Amendment and Restatement of Chapter 8.10 (Graffiti) Title 8, Chapter 8.10
is hereby amended and state as follows:

Chapter 8.10. Graffiti

Article I. Purpose and Introductory Sections

8.10.010 Findings and Purpose

- A.** The City Council finds that the increase of graffiti on public and private property 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 as well as the entire community. The City Council further finds that the presence of graffiti is inconsistent with the City of Oakland's goals of maintaining property, preventing crime, and preserving aesthetic standards. Often, unless graffiti is quickly removed, it encourages the creation of additional graffiti on nearby buildings and structures. The increase of graffiti promotes a perception that the laws protecting public and private property can be disregarded with impunity.
- B.** The remedies and penalties for graffiti are currently inadequate to compensate victims of such acts and to discourage acts of graffiti.
- C.** The purpose and intent of the City Council, through the amending and restating this Chapter, is to protect public and private property from acts of defacement by graffiti by increasing remedies for victims of such acts and penalties for those performing such acts in order to discourage such acts and to adequately compensate the victims of the graffiti and vandalism, including private parties and the City of Oakland.
- D.** A further purpose of this ordinance is to adopt state statutes permitting cities to provide for additional remedies and penalties against persons committing acts of graffiti.
- E.** A further purpose of this ordinance is to permit the use of restorative justice in lieu of monetary or criminal penalties against graffiti offenders, when appropriate.

8.10.020 Definitions.

As used in this Chapter, unless otherwise provided for within and except for those sections that enact state law and for which other definitions apply, the following words shall be defined as follows:

"Adhesive stickers" means any sheet of paper, fabric, plastic or other substance or material with an adhesive backing.

"Aerosol paint container" means any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint or other substances capable of being applied on public or private property in a manner that defaces the property.

"Anti-graffiti materials" means products or materials used to prevent the adhesion of unwanted coatings or applications or to facilitate the removal of graffiti. These products or materials are typically liquid-applied coatings or films applied over the surface to be protected, but can also include landscaping and other plantings. The term "anti-graffiti materials" also includes original products, structures or installations which are made from or which are composed of materials that prevent the adhesion of unwanted coatings or applications or which facilitate the removal of graffiti.

"Assists in Applying Graffiti" means a person who transports another for that person's applying Graffiti, assists in accessing a location upon which graffiti is applied, purchases Graffiti Implements knowing they might be used for applying Graffiti, or otherwise provides assistance in the act of applying Graffiti.

"Boat" means a boat of any kind, whether self-propelled or propelled by other means, including sailing vessels, and all other structures adapted to be navigated in water from place to place for recreational purposes or for the transportation of merchandise or persons.

"City" means City of Oakland

"City Attorney" means the City Attorney of the City of Oakland or her or his designee.

"City Administrator" means the City Administrator of the City of Oakland or her or his designee.

"Costs" means and includes, but is not limited to, court costs, all attorneys' fees, costs of removal of the graffiti or other inscribed materials, costs of repair and replacement of defaced property, costs of investigating the incident, and law enforcement costs, including, but not limited to police, code enforcement, public works, city attorney, or other city departments, incurred by the City in identifying and apprehending persons who create, cause or commit the vandalism in violation of this Chapter.

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

"Etchers" or "Etching Tools" means any sharp or pointed instrument, device or other mechanism including, but not limited to, glass etchers, metal etchers, cutting and grinding instruments, awls, chisels, glass cutters, drill bits or any other instrument that is capable of scratching or otherwise marking any surface including, but not limited to, glass, mirrors, windows, steel, aluminum, brass, tin, fiberglass, wood, plastic, concrete or any other surface.

"Graffiti" means and includes, but is not limited to, the writing, defacing, marring, inscribing, etching, scratching, painting or affixing of other markings on buildings or structures including, but not limited to, walls, fences, signs, retaining walls, driveways, walkways, sidewalks, curbs,

curbstones, street lamp posts, hydrants, trees, electric light or power or telephone or telegraph or trolley wire poles, fire alarms, drinking fountains, parking meters, boats, motor vehicles, trailers, statues and sculptures, newspaper stands, or garbage receptacles without the prior consent of the owner of the property on which the surface is located, regardless of the nature of the material. "Graffiti" shall not include: 1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the Oakland Municipal Code, or 2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Reservation Act (CA Civil Code sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. sections 101 et seq.)

"Graffiti implement" means an adhesive sticker/gum label, aerosol paint container, etching cream, etching tool, marking pen, a paint or graffiti sticker, spray actuators or other similar devices that may be used to scar or to deface property.

"Graffiti Violator" means a person who applies Graffiti or who Assists in Applying Graffiti.

"Guardian" means a minor's legal guardian who has custody and control of the minor.

"Gum Label" means any material such as, but not limited to, decals, stickers, posters or labels which contain a substance commonly known as adhesive or glue, which cannot be removed from the surface in an intact condition ink that is not water-soluble.

"Marker pen" means any marker pen or any similar implement containing a permanent ink, paint or other pigmented liquid with a marking tip of one-half inch or more at its largest dimension.

"Minor" means any person under the age of eighteen years who has not been emancipated by the court.

"Motor vehicle" means a passenger vehicle, truck, recreational vehicle, motorcycle, motor scooter, golf cart, or other similar self-propelled vehicle. "Motor vehicle" does not mean a motorized wheelchair, bicycle, tricycle or quadricycle.

"Property owner" means any person, firm, corporation, partnership or other entity, owning property either public or private, who is the record titleholder, or whose name or title appears on the last equalized assessment role with the Alameda County Clerk-Recorder's Office, or the lessee or other person having control or possession of the property.

"Registered owner" means the last registered owner or the last legal owner of record of a Vehicle as shown on the records of the Department of Motor Vehicles or similar state or federal agency.

"Trailer" means a vehicle designed for carrying persons or property on its own structure, which may be drawn by a motor vehicle.

"Vehicle" means a vehicle as defined in California Vehicle Code Section 670, and a motor vehicle as defined in California Vehicle Code Section 415.

Article II. Graffiti Public Nuisance and Unlawful

8.10.110 Graffiti As Public Nuisance

The City Council hereby declares and finds that Graffiti is a public nuisance subject to abatement according to the provisions and procedures contained in the Oakland Municipal Code and this Chapter.

8.10.120 Graffiti Unlawful.

- A.** It is unlawful and a violation of the Oakland Municipal Code and this Chapter for any person to write, paint, spray, chalk, etch, or otherwise apply Graffiti on public or privately owned buildings, signs, walls, permanent or temporary structures, places, or other surfaces located on public or privately owned property within the city.
 - 1.** A violation of this subsection shall be subject to enforcement through criminal prosecution, civil action, administrative citation, or nuisance abatement lien as provided for herein.
- B.** It is unlawful and a violation of the Oakland Municipal Code for any person owning or otherwise in possession or control of any real property within the city to permit or allow any graffiti to be placed upon or remain on any walls, temporary or permanent structures, places, or other surfaces located on such property when the graffiti is visible from the street or other public or private property.

Article III. Graffiti Abatement

8.10.200 Graffiti Abatement

This Article sets out the means and time frames for Graffiti Abatement.

8.10.210 Abatement By Graffiti Violator.

Any person applying Graffiti on public or privately owned real or personal property is required to remove the same within twenty-four (24) hours after notice by the City or private owner of the property involved. Such removal shall be done in a manner prescribed by the City. Removing Graffiti does not cure the Graffiti violation, but failure to remove Graffiti after notice is a violation separate from application of the Graffiti.

8.10.220 Time for Removal by Property Owner or Person in Possession or Control

- A.** Whenever the City Administrator determines that Graffiti exists on any occupied real property or any personal property in the city which is visible from the street, right-of-way or other public or private property, the City Administrator or his or her designee shall immediately notify the owner(s) of such property, and may notify the person(s) in possession or control of such property if different from the owner(s), to remove or paint over the Graffiti. The removal must be accomplished within ten (10) days after receipt of such notification or within ten (10) days after the notice is deemed to have been received in the event notice is mailed.

- B. When the real property is vacant and unoccupied, the removal shall be accomplished within ten (10) days after the notice is deemed to have been received by the person or company with dominion and control over the property.
- C. Properties subject to California Business and Professions Code Section 25612.5(a)(6) (liquor stores) are required to abate the Graffiti within the time frames set forth in that statute (72 hours).

8.10.230 Notice to Remove.

- A. **Notice to Graffiti Violator.** Notice to remove the Graffiti shall be in writing and personally delivered or by depositing such notice in the United States mail, postage paid, to the Graffiti Violator, or if the Graffiti Violator is a Minor, to the Minor's parent or guardian.
- B. **Notice to Property Owner.** Notice to remove the Graffiti shall be in writing and personally delivered to the owner(s) or occupants(s) of the property upon which the Graffiti is located, or by depositing such notice in the United States mail, postage paid, and addressed to the property owner(s) at the owner(s) last known address as it appears on the last Alameda County equalized assessments roll. If a notice to remove is also given to the person(s) in possession or control of the property, such notice shall be given in either manner specified in this section with respect to giving notice to the owner of the property, and may be addressed to "occupant" or "to whom it may concern," if the name of such person(s) is not known.

8.10.240 Failure to remove by owner or person in possession or control.

- A. In addition to any citation for failure to remove Graffiti, the City may abate or remove Graffiti after a notice to the Property Owner or person in possession and charge the cost of such removal or abatement to the Property Owner.
- B. **Administrative Citations and Civil Penalties.** The City may assess administration citations or civil penalties pursuant to O.M.C. Chapter 1.08 (Civil Penalties) or O.M.C. Chapter 1.12 (Administrative Citations) against a Property Owner or anyone in possession of real property who fails to timely remove or abate Graffiti after notice.
 - 1. **Administrative Citations.** The City may issue administrative citations pursuant to O.M.C. Chapter 1.12:
 - a. Not more than \$250 for the first citation issuance;
 - b. Not more than \$500 for the second citation issuance;
 - c. Not more than \$1,00 for a third issuance;
 - d. All subsequent violations shall be assessed as civil penalties pursuant to O.M.C. Chapter 1.08.

2. Civil Penalties.

- a. In instances a Property Owner or person in possession of property has been administratively cited for failing to timely remove or abate Graffiti more than three (3) time , the further acts shall be considered a major violation and the violator shall be assessed a Civil Penalty.
 - b. A Property Owner or person in possession of property who fails to remove or abate Graffiti after receiving an administrative citation after further notice may be assessed a civil penalty.
- C. Any owner(s) or person(s) in possession or control of the real property where Graffiti exists who fails to timely remove the Graffiti is subject to civil penalties, administrative citations, costs of Graffiti removal by the City, costs of City inspections of the property, nuisance abatement liens to recover costs, fees and penalties, and any additional penalties available under the law.
- D. In lieu of paying administrative citation or civil penalties, an owner or person in possession or control of real property who is cited for failing to timely remove Graffiti may apply to the City to have the amount of the citation or penalty applied to a portion of the costs of improvements designed to discourage the application of Graffiti.

Article IV. Municipal Code Liability, Remedies, and Penalties For Applying Graffiti on Public or Private Property

8.10.300 Purpose of Article IV.

This Article sets out the administrative, civil, and criminal liabilities and penalties available under the Oakland Municipal Code for placing Graffiti on City or other public property and private property, including real and personal property.

8.10.310 Power of Arrest and Citation

Pursuant to O.M.C. Chapter 1.24B, the City Administrator shall have the power to designate, by written order, that particular officers or employees shall have the authority to arrest or cite persons in violation of this Chapter.

8.10.320 Administrative Actions

- A. The City may assess administration citations or civil penalties pursuant to O.M.C. Chapter 1.08 (Civil Penalties) or O.M.C. Chapter 1.12 (Administrative Citations) against anyone who places Graffiti on public or private property.
- B. In instances where the estimated cost of Graffiti abatement is \$100 or less (based on the cost to the party removing the Graffiti , the Graffiti Violator shall be assessed an Administrative Citation in accordance with the following schedule:

1. Administrative Citations. The City may issue administrative citations pursuant to O.M.C. Chapter 1.12:
 - a. Not more than \$750 for the first citation issuance;
 - b. Not more than \$1,000 for the second citation issuance;
 - c. Not more than \$1,500 for the a third issuances;
 - d. All subsequent violations shall be assessed as civil penalties.
2. Civil Penalties.
 - a. In instances where the estimated cost of Graffiti abatement is greater than \$100 or the Graffiti Violator has committed more than three (3) acts of placing Graffiti within a 3 year period, the further acts shall be considered a major violation and the violator shall be assessed a Civil Penalty, pursuant to O.M.C. Chapter 1.08.
 - b. Determining the Amount. In determining the amount of the civil penalty, the all relevant circumstances shall be considered, including but not limited to: Costs to the City relating to clean-up of Graffiti caused by the Graffiti Violator, special costs to the City in the form of the payment of any reward in, the degree of offense to the public as determined by the magnitude, form and visual prominence of the Graffiti, the history of previous violations by the Graffiti Violator, the assets, liabilities and net worth of the person, and any corrective action taken by Graffiti Violator.
3. Each act of Graffiti is subject to an administrative citation or civil penalty as appropriate. Each application of Graffiti on the same property, but at different times is considered a separate act subject to citation. Each act of Graffiti on a separate piece of real or personal property is a separate act subject to citation even if occurring on the same general time and day.
4. If a Graffiti Violator fails to remove Graffiti within twenty-four (24) hours after notice by the City or the property owner, such failure to timely remove the Graffiti constitutes a separate violation and is a major violation subject to civil penalties.
5. In addition to assessing administrative citations or civil penalties, a Graffiti Violator shall also be assessed Costs relating to the Graffiti.

8.22.330 Civil Actions Against Graffiti Violators

- A. Any person or entity, public or private, on whose property Graffiti has been placed may bring a civil action against a Graffiti Violator. In addition, a duly established Business Improvement District, merchants' association, or business, community, or neighborhood

association or organization that removes Graffiti on behalf of its members may bring an action against a Graffiti Violator to recover its costs of removal.

- B. **Costs and Damages Recoverable.** The following damages may be assessed against a Graffiti violator:
1. The cost of abatement;
 2. Any cost for loss of use of the property on which the Graffiti has been placed (for example, the loss of use of a vehicle that must be repainted to remove Graffiti);
 3. Costs of investigation, including the cost of any code enforcement or police resources used to investigate each incident, as are set out in the Master Fee Schedule;
 4. Reasonable attorney's fees for bringing the action;
 5. Cost of suit;
 6. Treble damages if the violator has been found to have committed multiple acts of Graffiti.
 7. Punitive damages if appropriate under applicable state law and under state law standards.

8.10.340 Authorization of City Attorney to Bring Actions

- A. The City Attorney may bring an action to recover costs incurred by the City through the following methods:
1. **Adult Defendant.** The City Attorney may bring and maintain a civil action in the name of the City of Oakland to obtain a money judgment against the defendant for any amount not ordered or collected by a criminal court, including, but not limited to, all Costs, attorney's fees, court costs, and/or other costs in addition to civil penalties incurred in connection with the civil prosecution of any claim for damages or reimbursement.
 2. **Minor Offender.** The City Attorney may bring and maintain a civil action in the name of the City of Oakland to obtain a money judgment against the minor Graffiti Violator and/or his or her parent(s) or guardian(s) having custody and control of the minor for any amount not ordered or collected by the juvenile court, including, but not limited to, all Costs, attorney's fees, court costs, and/or other costs as defined in addition to civil penalties incurred in connection with the civil prosecution of any claim for damages or reimbursement.
- B. The City Attorney may also seek to recover the City's Costs incurred relative to the Graffiti, or such other costs as the City may have. The City Attorney may do so in any of the following ways:

1. Bring an action on the City's behalf to recover such costs;
2. Join an action brought by a private party to recover damages and costs relating to a Graffiti incident;
3. Permit a private party who is the victim of Graffiti to bring the action on the City's behalf.
4. In the event the City Attorney brings an action to cover the City's costs of a Graffiti incident, at the City Attorney's sole election, and with the permission of the private party or other public entity victim of a Graffiti incident, the City Attorney may pursue the private party or other public entity victim's claims against the Graffiti Violator for damages and costs.

8.10.350 Liability of Parent or Guardian of a Minor

Any parent or legal guardian of a Minor Graffiti Violator is personally liable for any and all Costs incurred by the City or any person or business in connection with the removal of Graffiti caused by conduct of said minor, and for all attorney's fees, court costs, and other Costs and any administrative citations or civil penalties incurred in connection with the civil or administrative prosecution of any claim for damages to the maximum extent permitted by California Civil Code Section 1714.1 or other applicable laws.

8.10.360 Liability of Owner or Operator of Vehicle Used in the Facilitation of Graffiti

To the extent permitted by law, an owner or operator of a motor vehicle is liable and responsible for injury to property resulting from the vehicle's use in applying Graffiti and for all Costs relating to the Graffiti incident when the vehicle is used with the express or implied permission of the owner or operator, irrespective of whether the owner or operator knew or should have known of the intended use of the vehicle.

8.10.370 Restorative Justice - Request to perform community service or parenting classes in lieu of Administrative Citation or Civil Penalty.

- A. A Graffiti Violator, or parent or guardian of a Minor Graffiti Violator cited with an administrative citation or civil penalty pursuant to this Chapter may request to participate in a restorative justice program; perform community service or attend parenting classes in lieu of payment of the administrative penalty. Community service and parenting classes must be in a program approved by the City Administrator.
 1. Any eligible responsible person(s) served with an administrative citation or civil penalty who requests permission to participate in a restorative justice program, perform community service or attend parenting classes in lieu of payment of the administrative penalty, as provided in Subsection (A), must make the request in writing and file it with the issuing department no later than fifteen (15) calendar days, excluding weekends and holidays, after service of the citation. All requests

made pursuant to Subsection (A) must include the address of the responsible person(s) for the purpose of correspondence by the issuing department.

2. The issuing department shall notify the responsible person(s) by first class mail, postage prepaid, whether the request to perform community service or attend parenting classes has been approved, and if approved, shall identify the program(s) that the responsible person must complete, and the date by which such program shall be completed.
 3. Eligibility for community service shall be based on factors including:
 - a. The number of incidents of Graffiti the Graffiti Violator has engaged in.
 - b. Whether the Graffiti Violator has previously participated in community service.
 - c. The cost of the Graffiti damage.
 4. The decision to grant or deny the request shall be in the sole discretion of the City Administrator. In the event the City Administrator denies the request to perform community service or attend parenting classes, the administrative citation or civil penalty otherwise payable must be made by the date specified in the notice denying the request to perform community service or attend parenting classes.
 5. Community service may include removing Graffiti from public or private property. The amount of community service shall be in proportion to the amount of administrative citation or civil penalty.
 6. The obligation to pay the administrative citation or civil penalty otherwise required shall be suspended during the time period provided for completion of the approved program as set forth in the written notification approving the request sent by the issuing department under O.M.C. 8.10.370 A2, above.
 7. The Graffiti Violator must provide proof of completion of the approved program by submitting, to the issuing department within five (5) calendar days following the date by which the program was to be completed, a certificate of completion issued by the program provider. Failure to present such proof within the required time period shall result in the reinstatement of the administrative penalty otherwise due as stated in the administrative citation without further notification by the issuing department. Payment of the amount due shall be made within seven (7) calendar days of the date by which the program was to be completed as specified in the notice provided under O.M.C. 8.10.370 A2, above.
- B. Restorative Justice Program. The City Administrator shall develop a program for referring Graffiti Violators to a restorative justice program. The restorative justice program shall be one that holds disputants and offenders accountable to recognize

harm, repair damages as much as possible, in lieu of civil or criminal penalties. The City Administrator may develop a list of agencies, non-profits, or other entities that have such programs. To the extent a restorative justice program may seek to involve the victim as well as the offender, the City Administrator shall encourage, but not require the victim to participate.

- C. In addition to any other remedy provided by law, if the responsible person falls to comply with the administrative citation or civil penalty, the City may use any other legal remedy available to gain compliance with the administrative citation or civil penalty.

8.10.380 Criminal Penalties Available for Applying Graffiti on Property.

- A. Graffiti as Misdemeanor. Application of Graffiti on any public or private property is a misdemeanor as a violation of the Oakland Municipal Code and this Chapter, in addition to any state law penal violations and any administrative or civil penalties.
- B. Criminal Prosecution. A person who suffers a conviction for committing an act of Graffiti who is granted probation, or any minor who is found to be a person described in California Welfare and Institutions Code Section 602 as a result of committing an act of Graffiti shall make restitution to the victim, in addition to any other penalties prescribed by law.
 - 1. Suspension of Driving Privileges. For every conviction of a person for a violation of California Penal Code Sections 594, 594.3, or 594.4 committed while the person was 13 years old or older, the City Attorney may petition the sentencing court to suspend existing driving privileges or delay issuance of driving privileges pursuant to California Vehicle Code Section 13202.6.
 - 2. Community Service. Upon conviction of any person for defacing property with Graffiti or other inscribed materials, the City Attorney may petition the sentencing court to, in addition to any punishment imposed under California Penal Code Section 594, order the defendant to clean-up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of Graffiti for up to one year as set forth in California Penal Code Section 594(c).
 - 3. Administrative Hearing. An administrative order may be sought for violations relating to Graffiti offenses against the responsible person(s) and/or, if the responsible person is a minor, against the person(s) or guardian(s) having custody and control of the minor.
- C. Selecting the Remedy. Selecting the appropriate remedy to be sought shall be consistent with the purpose and intent of this Chapter. This includes, but is not limited to, alternative options, such as graffiti removal, community service, parenting classes, counseling, and/or other forms of remedial education.

- D. Remedies Not Exclusive. Remedies provided for the enforcement of this Section are in addition to and do not supersede or limit any and all other remedies provided by law. The remedies provided herein are cumulative and not exclusive.

Article IV Sale of Graffiti Implements to Minors

8.10.400 Sale of Graffiti Implements to Minors

This Article sets out the City's restrictions on the sale of Graffiti Implements to Minors.

8.10.410 Sale of graffiti implements to minors is prohibited.

- A. It is unlawful for any person, other than a parent or legal guardian, or for any firm, corporation or partnership doing business in the city to sell, give or in any way furnish, to a minor any aerosol paint containers, marker pens, and/or other graffiti implements that are capable of defacing property without the consent of the minor's parent or legal guardian, which shall be given in advance.
- B. It is unlawful for any minor to have in his or her possession any aerosol paint container, marker pen, and/or other graffiti implements while: (1) upon public property, unless the minor is using the aerosol paint container, marker pen, and or other graffiti implement under the supervision of a parent, legal guardian, instructor/teacher, or employer; or (2) upon private property without the consent of the owner of such private property.

8.10.420 Signs required.

Any person engaged in the retail sale of aerosol paint containers and other liquid substances or markers capable of defacing property must display at the location of retail sale City-approved signs clearly visible and legible to employees and customers.

8.10.430 Display of aerosol paint containers and marker pens.

- A. Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol paint containers of any size or weight, or any marker pen with a marking tip one-half inch or more at its largest dimension that is capable of defacing property with permanent, indelible or waterproof ink, paint or other liquid, shall store or cause such aerosol paint containers or marker pens to be stored in an area continuously observable by employees of said retail commercial establishment during the regular course of business.
- B. In the event a retail commercial establishment is unable to store such aerosol paint containers or marker pens in an area as provided in this section, as an alternative such aerosol paint containers or marker pens shall be stored in an area viewable by, but not accessible to, the public in the regular course of business without employee assistance, pending the lawful sale or disposition of such aerosol paint containers or marker pens.

8.10.440 Penalty for wrongful sale, display, and storage.

- A.** Any person, organization, company, firm or association who sells, displays or stores any graffiti implements in violation of the provisions of this section 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 who used such graffiti implement in violation of this Article, and for all Costs, attorney's fees and court costs incurred in connection with the administrative or civil prosecution of any claim for damages or Costs.
- B.** Such person, organization, company, firm or association who sells, displays or stores any graffiti implements in violation of the provisions of this section shall be subject to administrative citation or civil penalty, for failing to comply with this Article irrespective of whether any of the violations are proven to have contributed to application of any Graffiti.

Article VI. State Graffiti Laws

8.10.500 Adoption of California Graffiti Laws

California Government Code Sections 38772, 38773.2, 38773.6, and 38773.7 are hereby adopted as an additional remedy addressing graffiti. These sections can only be used for the circumstances and using the definitions set forth therein and as stated herein.

8.10.510 Summary Abatement and Responsibility

- A.** This section O.M.C. 8.10.510 provides for the summary abatement of any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material at the expense of the minor or other person creating, causing, or committing the nuisance and by ordinance may make the expense of abatement of the nuisance a lien against property of the minor or other person and a personal obligation against the minor or other person pursuant to sections O.M.C. 8.10.520 or 530 (California Government Code Sections 38773.2 or 38773.6).
- B.** The parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor. The expense of abatement of any nuisance, resulting from the defacement by a minor of the property of another by graffiti or any other inscribed material, a lien against the property of a parent or guardian, having custody and control of the minor, and a personal obligation against the parent or guardian having custody and control of the minor pursuant to O.M.C. 8.10.520 or 530 (California Government Code Section 38773.2 or 38773.6).
- C.** Notwithstanding any other provision of law, the names and addresses of the parent or guardian having custody and control of the minor, if known, shall be reported by the probation officer of the county to the City Administrator.
- D.** As used in this section O.M.C. 8.10.500, et seq., the following terms 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 by the City in identifying and apprehending the minor or other person.
2. "Graffiti or other inscribed material" means any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property.
3. "Minor" or "other person" means a minor or other person who has confessed to, admitted to, or pled guilty or nolo contendere to a violation of Sections 594, 594.3, 640.5, 640.6, or 640.7 of the California Penal Code, or a minor convicted by final judgment of a violation of Sections 594, 594.3, 640.5, 640.6, or 640.7 of the California Penal Code, or a minor declared a ward of the Juvenile Court pursuant to Section 602 of the California Welfare and Institutions Code by reason of the commission of an act prohibited by Sections 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code.

8.10.520 Recovery of Costs and Liens

- A. If a property owner or other person in possession of a property or the City summarily abates a nuisance resulting from the defacement by a minor or other person of the property of another by graffiti or any other inscribed material by graffiti, the costs of abatement and related administrative costs incurred in the summary abatement of any nuisance may be recovered as set forth in this section.
- B. The City may record a lien on the property of the minor or other person or the property of the minor's parent or guardian having custody and control of the minor committing the graffiti nuisance for the abatement and administrative costs incurred in summarily abating graffiti nuisance. The City shall provide notice to the minor or other person prior to the recordation of a lien on the parcel of land owned by the minor or other person. In addition to notice to the minor, the City shall provide notice to the parent or guardian having custody and control of the minor prior to the recordation of a lien on the parcel of land owned by the parent or guardian having custody and control of the minor.
- C. The notice shall be served 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 California Code of Civil Procedure. If the minor or other person, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the minor or other person, in a conspicuous place, for a period of 10 days. The notice shall also be published pursuant to California Government Code Section 6062 in a newspaper of general circulation that is published in the county in which the property is located. If the parent or guardian having custody and control of the minor, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the parent or guardian having custody

and control of the minor, in a conspicuous place, for a period of 10 days. The notice shall also be published pursuant to California Government Code Section 6062 in a newspaper of general circulation that is published in the county in which the property is located.

- D. A graffiti nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located. From the date of recording, the lien shall have the force, effect, and priority of a judgment lien.
- E. A graffiti nuisance abatement lien authorized by California Government Code Section 38773.2 shall specify the amount of the lien; shall name the City of Oakland; the date of the abatement order; the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed; and the name and address of the recorded owner of the parcel.
- F. If the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection 5 above shall be recorded by the City. A graffiti nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.
- G. A graffiti nuisance abatement lien may be satisfied through foreclosure in an action brought by the City.
- H. If the County Recorder imposes a fee on the City to reimburse the costs of processing and recording the lien and providing notice to the property owner, the City may recover from the property owner such any costs incurred as part of its foreclosure action to enforce the lien.
- I. This section O.M.C. 8.10.520 "abatement and related administrative costs" include, but are 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 by the City in identifying and apprehending the minor or other person.
- J. The terms "graffiti or other inscribed material," "minor," and "other person" have the same meaning as specified in O.M.C. 8.10.510 (California Government Code Section 38772).

8.10.530 Graffiti Liens Alternative (California Government Code Section 38733.6)

- A. As an alternative to the procedure specified O.M.C. 8.10.520 (California Government Code Section 38773.2), the City, at the City Administrator's discretion may make costs of abatement of a nuisance resulting from the defacement by a minor or other person of property of another by graffiti or other inscribed material and a special assessment against a parcel of land owned by the minor or other person or by the parent or guardian having custody and control of the minor. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of

delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the abatement and related administrative costs relate has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon prior to the date on which the first installment of the taxes would become delinquent, then the abatement and related administrative costs shall not result in a lien against the real property but shall instead be transferred to the unsecured roll for collection. Notices or instruments relating to the abatement proceeding or special assessment may be recorded.

- B. The terms "abatement and related administrative costs," "graffiti or other inscribed material," "minor," and "other person" have the same meaning as specified in O.M.C. 8.10.510 and 520 (California Government Code Sections 38772 and 38773.2).

8.10.540 Treble Damages (California Government Code Section 38773.7).

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property or a person described in O.M.C. 8.10.520 D3 (minor or other person)(California Government Code Section 38772, paragraph (3) of subdivision (d)) is responsible for a condition that may be abated in accordance with O.M.C. 8.10.530 (California Government Code Section 38773.6), except for conditions abated pursuant to California Health and Safety Code Section 17980 the court may order that person to pay treble the costs of the abatement.

Article VII. Graffiti Abatement Funding and Rewards.

8.10.600 Establishment of Graffiti Abatement and Reward Fund

- A. The City Council may by resolution establish a Graffiti Abatement and Reward Fund as set out in this Article. The Fund has the purpose of assisting property owners or possessors who have been the victim of Graffiti multiple times with abatement and or with means of avoiding Graffiti and to provide for rewards for the identification and apprehension of Graffiti Violators.
- B. The City Council may fund the Graffiti Abatement and Reward Fund from general purposes funds and funds recovered from administrative citations, civil penalties, or treble or punitive damages recovered from Graffiti Violators, or other sources.

8.10.610 Rewards for information.

- A. Pursuant to California Government Code Section 53069.5, the City may offer a reward in an amount to be established by resolution of the City Council for information leading to the identification and the apprehension of Graffiti Violator who commits the act on any City-owned real or personal property. In the event of damage to public property, the offender or the parent or legal guardian of any emancipated minor must reimburse the City for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate. For the

purposes of this Section, diversion of the offending violator to a community service program, or a plea bargain to a lesser offense, shall constitute a conviction.

- B. Claims for rewards under this Section shall be filed with the City in the manner specified by the City Council in any legislation establishing the reward fund and any regulations promulgated by the City Administrator.
- C. No claim for reward shall be allowed unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this Section, the resolution authorizing the reward, or any regulations have been satisfied.
- D. The City may also offer a reward for information leading to the identification and the apprehension of a Graffiti Violator who commits the act on private property.

8.10.620 Funding for Properties defaced by Graffiti Multiple Times.

- A. Graffiti Abatement Fund. The City Council may by resolution set up a Graffiti Abatement Fund ("Fund"). The purpose of the Fund is to partially reimburse victims of multiple acts on graffiti for graffiti.
- B. Guidelines for eligibility for payment from the Fund shall generally be determined as follows and as more fully set forth in any funding resolution or by the City Administrator:
 - 1. The property defaced by graffiti must have been defaced more than three (3) times in a twelve (12) month period may be eligible for assistance from Fund.
 - 2. The property owner(s) or person(s) in possession or control must demonstrate specific good faith efforts to reduce graffiti on the property, including, but not limited to, the following:
 - a. Removing graffiti from the property at least three (3) times on three (3) separate occasions within seventy-two (72) hours of discovery and prior to notice by the City;
 - b. Reporting the Graffiti incidents to the Police Department and assisting in any Police investigation;
 - c. Having a Crime Prevention Through Environmental Design (CPTED) analysis performed on the property;
 - d. Taking affirmative steps to reduce the likelihood of repeated graffiti based on CPTED recommendations or alternatives. Examples of graffiti prevention methods: use natural deterrents such as landscaping (scrubs, thorny plants, vines, etc.), increase lighting, decrease through foot traffic (e.g. use fences to control entrances and exits), limit access to roofs by moving dumpsters away from walls and covering drainpipes to prevent graffiti vandals from scaling them and/or use of anti-graffiti material on walls such as sacrificial coatings, textured walls, or dark-colored walls.
- C. Victims of multiple graffiti incidents may also be eligible to have graffiti removed as part of community service by a Graffiti Violator.

- D. The provisions of this section O.M.C. 8.10.620 are not available for Graffiti applied to a property that is subject to California Business and Professions Code Section 25612.5(a)(6) (liquor stores).

8.10.630 Repair, Removal or Replacement of Defaced Public or Privately Owned Property.

- A. The purpose of this section is to adopt California Government Code Section 53069.3 (Repair, removal or replacement of defaced public or privately owned property).
- B. City Council may, by resolution, authorize the Fund to be used to remove graffiti or other inscribed material from publicly or privately owned real or personal property located within the City and to replace or repair public or privately owned property within that City that has been defaced with graffiti or other inscribed material that cannot be removed cost effectively.
- C. The Fund may only be used to the removal of the graffiti or other inscribed material itself, or, if the graffiti or other inscribed material cannot be removed cost effectively, the repair or replacement of the portion of the property that was defaced, and not the painting, repair, or replacement of other parts of the property that were not defaced.
- D. The Police Department, through the City Administrator, may promulgate procedures for pre-removal preservation of sufficient evidence of the graffiti or other inscribed material for criminal prosecutions or proceedings pursuant to California Welfare and Institutions Code Section 602 pertaining to the person or persons who inscribed the graffiti or other material. These procedures shall be followed by the City prior to or during removal of graffiti or other inscribed material.
- E. The City may recover the costs of graffiti removal pursuant to O.M.C. 8.10.520 and 530.

Article VIII. Administrative Appeals

8.10.700 Administrative Appeals

- A. An administrative assessment of fines or Costs may be appealed administratively pursuant to appeals of administrative actions set out in the Oakland Municipal Code or as developed by the City Administrator.
- B. A party aggrieved by a final administrative decision of the City may seek judicial review of the administrative decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6 within the time frame pursuant to those code sections.

Article IX Miscellaneous

8.10.820 Amendments to State Laws Adopted Herein

In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, it shall be deemed such amendments shall be automatically deemed adopted as part of this section of the Oakland

Municipal Code as if fully set forth herein unless the City Council amends this Chapter to do otherwise.

8.10.830 City Administrator Regulations

The City Administrator is authorized to establish any regulations to aid in administration or enforcement of this Chapter.

SECTION 2. Amendment to O.M.C. 1.28.020

1.28.020 - Violations as Infraction.

A. Any person violating any of the provisions or failing to comply with any of the regulatory requirements of the following code sections shall be guilty of an infraction:

. . .

- 7. Chapter 8.10. Graffiti. Violations of Chapter 8.10 for persons applying Graffiti shall be misdemeanors and not infractions except where specifically provided for in that Chapter.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation _____