

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, ADDING CHAPTER 8.55 (“GRAFFITI”) TO
TITLE 8 (“HEALTH AND SAFETY”) OF “THE CODE OF
THE CITY OF SANTA CLARA, CALIFORNIA”**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, 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;

WHEREAS, 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; and,

WHEREAS, it is the purpose of this new City Code Chapter 8.55 to establish procedures and adopt regulations whereby all public and private property within the City may be maintained free of graffiti.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That a new Chapter 8.55 (entitled “Graffiti”) is added to Title 8 (entitled “Health and Safety”) of “The Code of the City of Santa Clara, California,” (“SCCC”) to read as follows:

“Chapter 8.55

GRAFFITI

Sections:

- 8.55.010 Findings.
- 8.55.020 Definitions.
- 8.55.030 Nuisance.
- 8.55.040 Graffiti prohibited.
- 8.55.050 Removal of graffiti.
- 8.55.060 Right of City to remove.
- 8.55.070 Penalty provisions – Administrative citations.
- 8.55.080 Suspension or delay of driving privileges.
- 8.55.090 Parental civil liability.
- 8.55.100 Recovery of City funds against offender.
- 8.55.110 Administrative fee.

8.55.010 Findings.

In order to prevent graffiti and to provide an immediate and practical method, to be cumulative with and in addition to other provisions of this Code, Government Code Section 53069.3, and other remedies available at law, of combating the effects of graffiti vandalism on public and privately-owned structures and real property, the City Council of the City hereby finds that graffiti is detrimental to property values, degrades the community, causes an increase in crime, is inconsistent with the City’s property maintenance goals and aesthetic standards, is obnoxious, is a nuisance, and, unless it is quickly removed from public and private property, results in other properties becoming the target of graffiti. It is the intent of the City Council, through the adoption of this notice to all of those who callously disregard the property rights of others, that the law enforcement agencies of the City, including the Police Department and the City Attorney’s office, will strictly enforce the law to its maximum extent and severely prosecute those persons engaging in the defacement of public and private properties.

8.55.020 Definitions.

In addition to those definitions contained in Chapter 1.05.020 of this Code, the following definitions shall also apply:

(a) “Demand for payment” means an invoice for graffiti abatement costs prepared by the City containing the location and description of defaced property, a summary of graffiti abatement actions performed, a listing of abatement costs and expenses incurred by the City, and the basis for the determination of the responsible person or offender.

(b) “Graffiti” means any inscription, word, figure, or design that is marked, etched, scratched, inscribed, marred, drawn, sprayed, painted, pasted or otherwise affixed to, or on, any surface, without authorization in advance from the owner thereof.

(c) “Property” means real or personal property, whether publicly or privately owned, within the City limits.

(d) “Responsible person” means any person or entity who is the owner or who has primary responsibility for the repair or maintenance of the property.

(e) “Structure” means the same as defined in the Uniform Building Code.

(f) “Surface” means the exposed area of any object, including, but not limited to, walls, fences, sidewalks, curbs, street lamp poles, utility poles, trees and vegetation, signs, and/or trash receptacles.

8.55.030 Nuisance.

It is hereby declared that graffiti is obnoxious and a public and private nuisance, and is subject to abatement and punishment as defined in this Code.

8.55.040 Graffiti prohibited.

(a) It is unlawful for any person to apply graffiti upon any public or privately owned property, structure, or surface within the City.

(b) It is unlawful for any person who owns or is otherwise in control of any real property within the City, even if it is located in the City right-of-way, to permit or allow any graffiti to be placed upon or remain for longer than 72 hours on any surface located on such property and visible to the public.

8.55.050 Removal of graffiti.

(a) It is unlawful for a responsible person to permit property that has been defaced with graffiti to remain so defaced for a period longer than 72 hours after notification by the City of the existence of graffiti on the property which 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 and color to the surface upon which the graffiti is placed.

(b) For the purposes of this section, notification to the responsible person shall be by posting a notice on the property to be cleaned that the graffiti must be removed within 72 hours.

8.55.060 Right of City to remove.

(a) Use of Public Funds. Whenever the City becomes aware, or is notified and determines, that graffiti is so located on public or privately owned property viewable from a public or quasi-public place within the City, the City shall be authorized to use public funds for the removal of same, or for the painting or repairing of same, but shall not authorize or undertake to provide for the painting or repair of any more extensive area than that where the graffiti is located, unless the Chief of Police, or designee, determines that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community.

(b) Right of Entry. If a responsible person fails to remove graffiti within 72 hours of being notified by the City, the Chief of Police or designee (including an independent contractor) shall have the right to enter onto the property, paint over or remove said graffiti.

(1) Notice - Method of Service. Before entering onto a person's property to abate graffiti, the City shall notify the responsible person in writing of its intent to do so. Said notice shall be served by any of the following methods:

(A) Delivering to and leaving personally with the responsible person or a person of suitable age and discretion who resides or is employed at the property ("personal service");
or

(B) Certified mail, postage prepaid, return receipt requested to the last known address of the responsible person (simultaneously, a duplicate notice may be sent by regular mail, postage prepaid); or

(C) If the graffiti is on attended or occupied property, by posting or hanging a notice on the defaced property in a manner most likely to give actual notice to the responsible person. All multiple property owners shall establish an agent for service of process with an address and facsimile number where the owner can be notified during normal business hours (8:00 a.m. to 5:00 p.m.). Successful delivery of a notice to the agent's address or successful transmission of a facsimile to the number provided shall be an acceptable method of service for multiple property owners.

(2) Notice - When Served. The notice shall be deemed served and the responsible person considered notified at the time of personal service; or the successful delivery of the certified letter (or the third day after mailing of the duplicate notice); or 72 hours after the notice is posted on

the property; or when a facsimile is successfully transmitted to the multiple property owner's agent for service of process. Actual notice shall cure any defect in the effort to provide constructive notice.

(3) Contents of Notice. The notice shall include the Santa Clara City Code section being violated; the property address or location where the graffiti has been observed; the date(s) and time(s) the graffiti was observed; a description of the corrective action required and time limit, including the need to use paint which is similar in shade and color to the structure or item upon which the graffiti is painted; the consequences of failing to comply, all hearing and appeal rights; and the name of the issuing officer or staff member.

(4) Securing Owner Consent. Prior to entering onto private property for the purpose of graffiti removal, the City shall attempt to secure the written or oral consent of the responsible person, which may be incorporated into the required written notice. The responsible person may execute and file with the City a consent form that authorizes the City, without notice, to immediately enter onto the property to paint over any graffiti. Such consent shall be effective indefinitely, until withdrawn in writing by the responsible person.

(5) Graffiti in "Privacy Areas." Unless a warrant or proper consent is secured, the City shall not remove or paint over graffiti if it is located in an area where the property owner or occupant has a reasonable expectation of privacy ("privacy area"). Likewise, the City shall not remove or paint over graffiti that is not in a privacy area if a privacy area must be entered to abate said graffiti.

6. Pre-Abatement Conference. A responsible person may request, by telephone, in writing, or in person, that an informal conference be held before the City enters the party's property to abate graffiti. The request for a conference shall stay the City's abatement efforts and must be made within 72 hours of being served notice pursuant to subsection (b)(1) of this section.

The conference shall be conducted by the Chief of Police or his/her designee. The purpose of the conference shall be to determine the propriety of the City's impending abatement action. A decision on the validity of that action shall be made and communicated to the responsible person before the end of the conference (unless a continuance is necessary). If determined to be valid, the City may abate the offending graffiti 72 hours after the decision.

8.55.070 Penalty provisions - Administrative citations.

(a) It is the City's intent that, pursuant to California Penal Code section 640.6(a), all acts of graffiti vandalism occurring within the City shall be prosecuted as misdemeanors pursuant to California Penal Code section 594, et seq., or this Chapter. Accordingly, any violation of Section 8.55.040(a) of this Chapter shall be a misdemeanor punishable by either six (6) months in jail, a \$1,000.00 fine, or by such fine and imprisonment, and by the performance of community service in the form of graffiti clean-up to the maximum extent permitted 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 Chapter are punishable in the same manner as set forth in Chapter 1.05 of this Code.

(c) Violation of any section of this Chapter may be filed as an infraction or a misdemeanor at the discretion of the City Attorney.

(d) Any person or entity violating any provision of this Chapter or failing to comply with any of its requirements shall be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of this Chapter is committed, continued, or permitted by such person or entity and shall be deemed punishable therefore as provided herein.

(e) Community service in and for the City may be imposed by the court, in addition to any penalty imposed pursuant to this Chapter, where there has been a conviction or guilty or nolo contendere plea to a violation of this Chapter.

(f) Any community service which is required pursuant to Subsection C of this Section a person under the age of 18 years may be required by the court to be performed in the presence and under the direct supervision of the person's parent or legal guardian.

(g) If a minor is personally unable to pay any fine or restitution levied for violating this Chapter, the parent or legal guardian shall be liable for the payment of the fine or restitution for any intentional acts of the minor.

8.55.080 Suspension or delay of driving privileges.

For each conviction of a person aged 13 to 21 for violation of Section 8.55.040(a) or any State law pertaining to vandalism of property with a graffiti implement, the City shall petition the sentencing court to suspend existing driving privileges or delay the issuance of driving privileges in accordance with California Vehicle Code section 13202.6.

8.55.090 Parental civil liability.

In addition to any other remedy provided herein, each parent or legal guardian shall also be personally liable for any and all costs to any person or business incurred in connection with the removal of graffiti caused by that parent or guardian's minor child, and for all law enforcement costs, City staff costs, attorneys' fees and court costs incurred in connection with the civil prosecution of any claim for damages or reimbursement in accordance with California Civil Code section 1714.1.

8.55.100 Recovery of City funds against offender.

(a) Once an offender has been identified by the Police Department or other law enforcement agency and the City has expended funds to remove graffiti, regardless of location,

which was caused by the identified offender, the City may recover the funds in accordance with the following procedures:

(1) The Police Department will submit a demand for payment, ordering payment to be made to the City within 10 days. The demand for payment shall also provide the offender with notice of appeal procedures.

(2) If the identified offender is a minor, then pursuant to Government Code section 53069.3(d), the Police Department will submit a demand for payment to the minor and the minor's parents or guardian having custody and control of the minor, ordering payment to be made within 10 days. The demand for payment shall also provide the parents or guardian with notice of appeal procedures.

(b) Appeals from the demand for payment shall be made in accordance with section 1.10.060 of this Code.

(1) At the hearing, if one is requested, the minor and the parent or guardian having custody and control of the minor may each be heard and provided with the opportunity to show cause why the City should not recover funds from the minor and the parent or guardian having custody and control of the minor. Following the hearing, the hearing officer shall determine whether the City should recover funds from the minor and the parent or guardian having custody and control of the minor.

(2) If the Administrative Hearing Officer determines that the City should recover funds from the offender or, if a minor, the minor and the parent or guardian having custody and control of the minor, the Administrative Hearing Officer shall issue an order to that effect, and the amount shall be payable to the City. The determination of the Administrative Hearing Officer is final.

(3) Pursuant to Government Code sections 38772, 38773.2 and 38773.6, the parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor for the funds expended by the City. If payment is not made within 30 days from the date of the accounting and demand for payment, the payment shall be deemed delinquent and shall be subject to a penalty assessment of \$100.00 plus interest on the unpaid amount, which interest shall accrue at the rate of one and one-half (1-1/2) percent per month until paid.

(4) In the event the funds have not been paid within 30 days from the date of issuing an accounting and demand for payment, the amount unpaid including any penalty and interest thereon, shall constitute a lien pursuant to Government Code sections 38772 and 38773.2 against the property of the minor and against the property of the parent or guardian having custody and control of the minor. Prior to recording a notice of lien, the City shall provide notice pursuant to Government Code section 38773.2. Any such lien not paid by June 30th of each year may, upon adoption of a resolution by the City Council, be collected along with, and in the same manner as, the general property taxes. The lien property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.

(5) As an alternative to a lien and pursuant to Government Code section 38773.6, the funds shall constitute a special assessment against a parcel of land owned by the minor or by the parent or guardian having custody and control of the minor. The assessment shall be collected as provided for in Government Code section 38773.6.

(6) In addition to any other remedy provided herein or available at law, the amount owed pursuant to Government Code section 38772 shall constitute a personal obligation against the offender, or if a minor, the minor and the parent or guardian having custody and control of the minor.

8.55.110 Administrative fee.

An administrative fee as established from time to time by resolution of the City Council shall be added as part of any abatement proceedings.

SECTION 2: Savings clause.

The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Constitutionality, severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 4: Effective date.

This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this ____ day of April 2013, by the following vote:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None
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