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August 19, 2002

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: Amendment to State Penal Code Section 594.1
Assembly Bill 1344 Relating to Etching Cream - Support Letter**

LOCATION AND COUNCIL DISTRICT: City-wide.

RECOMMENDATION:

It is recommended that the Law and Legislation Committee review and approve the staff recommendation to support State Assembly Bill 1344 relating to etching cream.

CONTACT PERSONS: Max B. Fernandez, Director Area 1, 264-7940
Robert L. Rose, Chief of Code Enforcement, 264-5947

FOR COMMITTEE MEETING OF: September 3, 2002

SUMMARY:

The City of Sacramento has seen an increase in the spread of graffiti including the use of etching cream which can permanently deface property. The proposed State Assembly Bill No. 1344 will amend Section 594.1 of the Penal Code (Exhibit A) to extend the provisions of existing anti-graffiti law to include etching cream. Thus, it will be unlawful for any person, firm, or corporation, except a parent or legal guardian to sell or give or in any way furnish to a minor any etching cream or aerosol container of paint that is capable of defacing property without first verifying the person's majority and identity. This amendment would not apply to the use by minors of six ounces or less of etching cream or an aerosol container of paint when the minor is under the supervision of the minor's parent, guardian, instructor, or employer. Also, etching cream, aerosol containers of paint, or related substances would be allowed for school-related activities when controlled and supervised in the classroom or at a project site and when in compliance with Section 32060 of the Education Code regarding the safe use of toxic art supplies in schools. Violation of any provision of amendment to Section 594.1 of the Penal Code will be deemed a crime and punishable as a misdemeanor.

BACKGROUND:

The City of Sacramento Anti-Graffiti unit has worked with the Multi Agency Graffiti Intervention Committee (i.e. M.A.G.I.C.) to address the growing use by minors of etching cream as a graffiti substance. The result of this cooperative effort is AB 1344, amending Section 594 of the Penal Code. The proposed amendment would extend existing law provisions for aerosol paint containers to further include etching cream, also to be deemed unlawful for a minor to possess (when for the purpose of defacing real or personal property) or to be sold to a minor.

The amendment also attempts to prevent future graffiti by allowing the jurisdictions that have adopted a graffiti abatement program to order the defendant, and his or her parents or guardians to maintain the damaged property free of graffiti according to the Penal Code specifications for varying periods of time depending on the number of prior convictions such as for a period of 90 days on a first conviction and up to 240 days for two or more prior convictions under this section. Also, the defendant may be ordered by the court to perform community service or graffiti removal or to undergo counseling. All of these measures are intended to control the access of minors to graffiti substances in order to prevent future illegal graffiti activity. Due to the quick turnaround, staff drafted a support letter (Exhibit B) for the Law and Legislation Committee Chair Cohn's signature dated August 20, 2002 and has sent it to the bill's author, Assembly Member Cox. Since the bill has now been enrolled and sent to the Governor for approval, a letter urging the Governor's support has been prepared (Exhibit C) from the Law and Legislation Committee Chair.

FINANCIAL CONSIDERATIONS:

Existing City Code Chapter 8.24 provides for the cost recovery of the anti-graffiti abatement program. No additional cost recovery is anticipated as a result of passage of State Assembly Bill No. 1344.

ENVIRONMENTAL CONSIDERATIONS:

Code Enforcement's anti-graffiti abatement program is consistent with working towards a safe, healthy, and clean environment in the communities of the City of Sacramento.

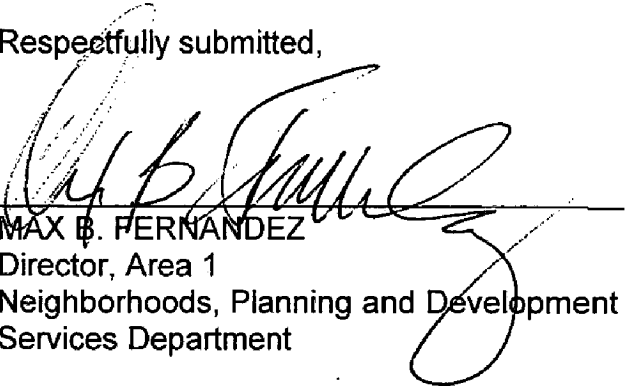
POLICY CONSIDERATIONS:

Support of this legislation is consistent with the City's mission to protect, preserve and enhance the quality of life for present and future generations.

E/SBD:

Not applicable.

Respectfully submitted,



MAX B. FERNANDEZ
Director, Area 1
Neighborhoods, Planning and Development
Services Department

RECOMMENDATION APPROVED:



KEN NISHIMOTO
Deputy City Manager

Attachments
AB 1344
Letters of support

CHAPTER _____

An act to amend Section 594.1 of the Penal Code, relating to etching cream.

LEGISLATIVE COUNSEL'S DIGEST

AB 1344, Cox. Etching cream.

Existing law provides that it is unlawful for anyone to sell, give away, or furnish a minor with an aerosol container of paint capable of defacing property except as specified. Existing law also requires retailers selling aerosol containers of paint to post a sign, as specified, stating that defacement of real or personal property with paint is unlawful. It is also unlawful for a minor to possess an aerosol container of paint for the purpose of defacing property while in any public place.

This bill would extend these provisions to include etching cream, as defined. By creating a new crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 594.1 of the Penal Code is amended to read:

594.1. (a) (1) It shall be unlawful for any person, firm, or corporation, except a parent or legal guardian, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any etching cream or aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence of majority and identity.

(2) For purposes of this section, "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.

(3) For purposes of this subdivision, “bona fide evidence of majority and identity” is any document evidencing the age and identity of an individual which has been issued by a federal, state, or local governmental entity, and includes, but is not limited to, a motor vehicle operator’s license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the armed forces.

(4) This subdivision shall not apply to the furnishing of six ounces or less of etching cream or an aerosol container of paint to a minor for the minor’s use or possession under the supervision of the minor’s parent, guardian, instructor, or employer.

(5) Etching cream, aerosol containers of paint, or related substances may be furnished for use in school-related activities that are part of the instructional program when used under controlled and supervised situations within the classroom or on the site of a supervised project. These containers may not leave the supervised site and shall be inventoried by the instructor. This use shall comply with Section 32060 of the Education Code regarding the safe use of toxic art supplies in schools.

(b) It shall be unlawful for any person under the age of 18 years to purchase etching cream or an aerosol container of paint that is capable of defacing property.

(c) Every retailer selling or offering for sale in this state etching cream or aerosol containers of paint capable of defacing property shall post in a conspicuous place a sign in letters at least three-eighths of an inch high stating: “Any person who maliciously defaces real or personal property with etching cream or paint is guilty of vandalism which is punishable by a fine, imprisonment, or both.”

(d) It is unlawful for any person to carry on his or her person and in plain view to the public etching cream or an aerosol container of paint while in any posted public facility, park, playground, swimming pool, beach, or recreational area, other than a highway, street, alley, or way, unless he or she has first received valid authorization from the governmental entity which has jurisdiction over the public area.

As used in this subdivision, “posted” means a sign placed in a reasonable location or locations stating it is a misdemeanor to possess etching cream or a spray can of paint in that public facility,

park, playground, swimming pool, beach, or recreational area without valid authorization.

(e) (1) It is unlawful for any person under the age of 18 years to possess etching cream or an aerosol container of paint for the purpose of defacing property while on any public highway, street, alley, or way, or other public place, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

(2) As a condition of probation for any violation of this subdivision, the court may order a defendant convicted of a violation of this subdivision to perform community service as follows:

(A) For a first conviction under this subdivision, community service not to exceed 100 hours over a period not to exceed 90 days during a time other than his or her hours of school attendance or employment.

(B) If the person has a prior conviction under this subdivision, community service not to exceed 200 hours over a period of 180 days during a time other than his or her hours of school attendance or employment.

(C) If the person has two prior convictions under this subdivision, community service not to exceed 300 hours over a period not to exceed 240 days during a time other than his or her hours of school attendance or employment.

(f) Violation of any provision of this section is a misdemeanor. Upon conviction of any person under this section, the court may, in addition to any other punishment imposed, if the jurisdiction has adopted a graffiti abatement program as defined in subdivision (f) of Section 594, 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, as follows:

(1) For a first conviction under this section, for 90 days.

(2) If the defendant has a prior conviction under this section, for 180 days.

(3) If the defendant has two or more prior convictions under this section, for 240 days.

Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (e) or (f) to undergo counseling.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



EXHIBIT B

OFFICE OF THE
CITY COUNCIL

STEVE COHN

COUNCIL MEMBER
DISTRICT THREE

CITY OF SACRAMENTO
CALIFORNIA

August 20, 2002

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The Honorable Dave Cox
Minority Floor Leader
State Capitol
Room 3104
Sacramento, CA 95814

Subject: AB1344 – SUPPORT

Dear Assembly Member Cox:

As chair of the City of Sacramento's Law and Legislation Committee, I enthusiastically support your bill, AB1344 relating to etching cream. Passage of this bill would amend Penal Code 594.1, to add prohibition on the sale, purchase and possession of etching cream by minors to the existing prohibition on aerosol spray paint.

Vandalism involving the use of etching cream is increasing throughout California, including here in the Capital City. This type of graffiti is not only a visual blight, but the damage repair is difficult, costly and labor intensive. Illegal use of etching cream and its easy accessibility perpetuates the existing graffiti problems in our communities.

I appreciate your leadership in pushing for the adoption of AB1344. If you have any questions regarding the City of Sacramento's position in this matter or if there is anything we can do to help pass this important legislation, please contact me. Thank you for your consideration.

Sincerely,

STEVE COHN, Chair
Law & Legislation Committee
Sacramento City Council

Cc: Senator Mike Machado
Senator Deborah Ortiz
Assembly Member Peschetti
Assembly Member Darrell Steinberg

September 3, 2002

Governor Gray Davis
California Capitol Building
Sacramento, CA 95814

Subject: Assembly Bill 1344 - **SUPPORT**

Dear Governor Davis:

As chair of the City of Sacramento's Law and Legislation Committee, I enthusiastically support Assembly Bill 1344 relating to etching cream. Passage of this bill would amend Penal Code 594.1, to add prohibition on the sale, purchase and possession of etching cream by minors to the existing prohibition on aerosol spray paint.

Vandalism involving the use of etching cream is increasing throughout California, including here in the Capital City. This type of graffiti is not only a visual blight, but the damage repair is difficult, costly and labor intensive. Illegal use of etching cream and its easy accessibility perpetuate the existing graffiti problems in our communities.

We urge you to approve the adoption of AB 1344. If you have any questions regarding the City of Sacramento's position in this matter, please contact me. Thank you for your consideration.

Sincerely,

STEVE COHN, Chair
Law & Legislation Committee
Sacramento City Council

CC: Senator Mike Machado
Senator Deborah Ortiz
Assembly Member Dave Cox
Assembly Member Peschetti
Assembly Member Darrell Steinberg