

**ORDINANCE NO. 97-073**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF DEC 09 1997

**AN ORDINANCE AMENDING SECTION 61.09.904 OF TITLE 61, RELATING TO THE SUMMARY ABATEMENT OF GRAFFITI, AND CHAPTER 61.17 OF TITLE 61 OF THE SACRAMENTO CITY CODE, RELATING TO GRAFFITI ABATEMENT**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

**SECTION 1. B**

**Section 61.09.904 is amended to read as follows:**

61.09.904 Summary Abatement of Graffiti.

- (a) The city council finds that proliferation of graffiti, especially gang related graffiti, presents an imminent danger to the public safety and welfare. Law enforcement officials and other experts agree that immediate removal of gang-related graffiti is necessary to reduce the risk of violent and other criminal activities associated with gangs and gang territories. The presence of graffiti which is not abated immediately encourages the creation of additional graffiti, resulting in neighborhood blight and increased costs of abatement.
- (b) Notwithstanding the provisions of Section 61.09.902, the department head or his or her designee is hereby authorized to summarily abate gang-related graffiti. The abatement may be undertaken by city staff or by outside contractors.

For purposes of this section only, "gang-related graffiti" shall be defined as graffiti, as that term is defined in Section 61.17.1701 of this title, which

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is placed on private or public property by either of the following: (1) a criminal street gang as that term is defined by Penal Code Section 186.22; or (2) any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of graffiti activity, which has a common name(s) or common identifying sign(s) or symbol(s), and whose members individually or collectively engage in or have engaged in a pattern of graffiti activity.

- (c) The costs of removal may be assessed against an adult or emancipated minor responsible for creating the graffiti nuisance pursuant to the procedures in Chapter 61.17 of this title. The expense of abatement may be assessed against a minor responsible for creating the graffiti nuisance or his or her parent or guardian who has custody and control of the minor pursuant to the procedures in Chapter 61.17 of this title.

## **SECTION 2.**

**Chapter 61.17 is amended to read as follows:**

### **61.17.1700. Legislative Findings and Purpose.**

The City Council finds that the increase of graffiti on both public and private buildings, structures, and other places 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. The City Council further finds that the presence of graffiti is inconsistent with the City's goals of maintaining property, preventing crime, and preserving aesthetic standards. Unless graffiti is quickly removed, it encourages the creation of additional graffiti on nearby buildings and structures.

### **61.17.1701. Definitions.**

As used in this chapter, the following terms have the meanings respectively ascribed to them:

"Costs of removal" means the costs of removing graffiti and related administrative costs incurred by the City.

"Expense of abatement" includes but is not limited to, court costs, attorney's fees, costs of removal of the graffiti or inscribed material, costs of repair and replacement of

defaced property, and the law enforcement costs incurred by the city in identifying and apprehending a minor who defaces property with graffiti.

"Graffiti" means any inscription, word, figure, or design that is marked, etched, scratched, drawn, sprayed, painted, pasted or otherwise affixed to, or on, any surface to the extent that it was unauthorized by the owner, or, despite authorization, is deemed by the Neighborhood Services Anti-Graffiti Program to be a public nuisance.

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

"Minor" means an unemancipated person under the age of eighteen (18) who has confessed to, admitted to, or pled guilty or nolo contendere to a violation of Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code, or a minor convicted by final judgment of a violation of Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code, or a minor declared a ward of the Juvenile Court pursuant to Section 602 of the Welfare and Institutions Code by reason of the commission of an act prohibited by Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code.

"Parent" means a minor's parent(s) who have custody and control of the minor.

"Property" means real or personal property, whether publicly or privately owned within the City.

"Property owner" means any person who is the owner of the property, or who has primary responsibility for control over the property, or who has primary responsibility for the repair and maintenance of the property.

61.17.1702. Declaration of Public Nuisance.

The City Council declares graffiti is a public nuisance, subject to abatement as prescribed in this chapter.

61.17.1703. Proceedings against property owner.

- (a) Prohibition. No property owner shall permit his or her property that has been defaced with graffiti to remain so defaced for more than ten (10) calendar days after the head of the Neighborhood Services Anti-Graffiti Program has notified him or her of the graffiti.

- (b) Notice of graffiti. The head of the Neighborhood Services Anti-Graffiti Program shall notify a property owner of the existence of a graffiti nuisance on his or her property. The notice of graffiti shall inform the property owner that he or she has ten (10) calendar days from the mailing of the notice to remove the graffiti from the property. The notice of graffiti shall be sent by first class mail.
- (c) Notice of violation. If the graffiti is not removed within ten (10) calendar days from the mailing of the notice of graffiti, the head of the Neighborhood Services Anti-Graffiti Program shall send by certified mail, postage prepaid, return receipt requested, a notice of the violation to the property owner. The notice of violation shall inform the property owner of his or her right to request a hearing within ten (10) calendar days of the mailing of the notice of violation.
- (d) Notice of hearing. If a hearing is requested by the property owner, the head of the Neighborhood Services Anti-Graffiti Program shall give the property owner not less than ten (10) days prior notice of a hearing to be held by the hearing officer for the purpose of showing cause why the public nuisance should not be abated by the City. The notice shall contain:
  - (i) The street address and such other description as is required to identify the premises.
  - (ii) A statement specifying the conditions that constitute the nuisance.
  - (iii) An order to the property owner to appear before a hearing examiner at a stated time, but in no event less than ten days after having mailed such notice, to show cause why the premises should not be declared a public nuisance and abated in accordance with this chapter.
  - (iv) A statement advising the property owner that he or she has the option of voluntarily abating the nuisance prior to the date set for the hearing. If the property owner chooses voluntary abatement, such abatement must be completed prior to the hearing date. The property owner must advise the head of the Neighborhood Services Anti-Graffiti Program in writing that he or she will abate the nuisance, and the date of completion. The head of the Neighborhood Services Anti-Graffiti Program will inspect the premises on the completion date, and if the nuisance has been abated, the hearing will be taken off the

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calendar. The property owner may request a continuance of the hearing pursuant to Section 61.17.1703 (i).

- (e) **Service of Hearing Notice.** The Hearing notice shall be served upon the requesting party either personally or by mailing a copy of such notice by certified mail, postage prepaid, return receipt requested, not less than ten (10) calendar days prior to the hearing date.
- (1) In the event that the property owner refuses to accept certified, return receipt mail, or cannot personally be served, service may be made by substituted service. In lieu of personal delivery of a copy of the notice, a notice or any amended or supplemental notice may be served by leaving a copy during usual office hours in his/her office with the person who is apparently in charge, and by thereafter mailing by first-class mail a copy of the notice to the owner at the address where the copy of the notice was left. Or, a notice of any amended or supplemental notice may be served by leaving a copy at the owner's dwelling, usual place of abode, or usual place of business in the presence of a competent member of the household or a person apparently in charge of his/her office or place of business, at least 18 years of age, and thereafter mailing by first-class mail a copy of the notice to the owner at the address where the copy was left.
  - (2) In the event the property owner refuses to accept certified return receipt mail or cannot be personally served and has a property manager, or rental agency overseeing the premises, substituted service may be made as set forth in subsection (1) above upon the property manager or rental agency.
  - (3) If the property owner lives out of state and will not accept certified, return receipt mail, then service may be made by first-class mail.
  - (4) If the property owner cannot be located after a diligent search, service may be made by publication in a Sacramento newspaper of general circulation which is most likely to give actual notice to the property owner.
- (f) **Proof of service of hearing notice.** Proof of service of the hearing notice shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, and manner in which service was made.

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- (g) Hearings—generally. At the time set for hearing, the hearing examiner shall proceed to hear testimony of the head of the Neighborhood Services Anti-Graffiti Program, the property owner, and any other competent person regarding the condition of the premises, and other relevant facts concerning the matter.
- (h) Record of oral evidence at hearing. The proceedings at the hearing shall be recorded by a tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure Section 1094.6, as presently written or subsequently amended.
- (i) Continuances. The hearing examiner may, upon request of the responsible party or upon request of the head of the Neighborhood Services Anti-Graffiti Program, grant continuances from time to time for good cause shown, or upon his or her own motion.
- (j) Oaths; certification. The hearing examiner or certified shorthand reporter shall administer the oath or affirmation.
- (k) Evidence rules. Government Code of the State of California, Section 11513, Subsections (a), (b), and (c), as presently written or subsequently amended, shall apply to hearings under Title 61 of the Sacramento City Code.
- (l) Burden of proof. It must be shown by a preponderance of the evidence that the condition of the premises constitutes a public nuisance.
- (m) Rights of parties.
  - (i) Each party may represent himself or herself, or be represented by a person of his or her choice.
  - (ii) If a party does not proficiently speak or understand the English language, he or she may provide an interpreter, at his or her own cost, to translate for the party. An interpreter shall not have any involvement in the issues of the case prior to the hearing.

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- (n) Official notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.
- (o) Inspection of premises.
  - (i) The hearing examiner may inspect the premises involved in the hearing prior to, during, or after the hearing, provided that:
    - (A) Notice of such inspection shall be given to the parties before the inspection is made;
    - (B) The parties are given an opportunity to be present during the inspection; and
    - (C) The hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusion drawn from such facts.
  - (ii) Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.
- (p) Form and contents of decision; finality of decision.
  - (i) The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall also require the property owner to commence abatement of the nuisance not later than fifteen (15) days after the issuance of the decision, and that the abatement be completed within such time as specified by the hearing examiner, or in the alternative, within the time designated by the head of the Neighborhood Services Anti-Graffiti Program. The decision shall inform the property owner that if the nuisance is not abated within the time specified, the nuisance may be abated by the city in such manner as may be ordered by the Neighborhood Services Anti-Graffiti Program.

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- (ii) The decision shall also inform the applicant that the time for judicial review is governed by California Code of Civil Procedure 1094.6. Copies of the decision shall be delivered promptly to the parties personally or sent to them by certified mail. The decision shall be final when signed by the hearing examiner and served as provided in this chapter.
- (q) Service of the hearing examiner's decision. Upon issuance of the decision, the head of the Neighborhood Services Anti-Graffiti Program shall post a copy of it conspicuously on the premises involved and shall serve a copy on the property owner, in the same manner as set forth in Section 61.17.1705(e), and one copy shall be served on each of the following, if known to the head of the Neighborhood Services Anti-Graffiti Program or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record, the owner or holder of any lease of record, and the holder of any other estate or legal interest of record in the premises.
- (r) Abatement by City.
  - (i) If a hearing has not been requested by the responsible party, the City may enter upon the property for the purpose of removing the graffiti, in accordance with subsections (A) and (B) below:
    - (A) Prior to entering upon private property or property owned by a public entity other than the City for the purpose of removing graffiti, the City shall attempt to secure the consent of the property owner, and a release of the City from liability for damage to the property.
    - (B) If a property owner fails to remove the offending graffiti within the specified ten (10) day period, or if the property owner has refused to give consent to the City for entry on terms acceptable to the City consistent with this chapter, the City may commence abatement of the graffiti nuisance and proceedings to recover the costs of removal according to the procedures set forth in this chapter.
  - (ii) Summary abatement of gang-related graffiti is governed by Section 61.09.904 of this Code.

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(s) Recovery of costs of removal against property owner.

The recovery of the costs of removal against a property owner shall be according to the following procedures:

- (i) Upon the City's removal of the public nuisance, the City may provide an accounting of the costs of removal along with a demand for payment to the property owner.
- (ii) If the costs of removal have not been paid within thirty (30) days from the date of issuing an accounting and demand for payment, the unpaid amount shall constitute a lien pursuant to Government Code Sections 38773 and 38773.1. Prior to recording a notice of lien, the hearing officer shall provide notice pursuant to Government Code Section 38773.1.
- (iii) As an alternative to the lien described in subsection (5), above, the expense of abatement may, pursuant to Government Code Section 38773.5, constitute a special assessment against a parcel of land owned by the property owner. The assessment shall be collected as provided for in Government Code Section 38773.5.
- (iv) In addition to any other remedy provided in this chapter or available at law, the costs of removal pursuant to Government Code Sections 38773, 38773.1 and 38773.5 shall constitute a personal obligation against the property owner.

61.17.1704 Proceedings against adults and emancipated minors.

- (a) The City shall be entitled to recover the costs of removal from an adult or emancipated minor.
- (b) Notice and order. The head of the Neighborhood Services Anti-Graffiti Program may issue a notice and order to an adult or emancipated minor to recover the costs of removal. The notice and order shall contain:
  - (i) The street address and such other description as is required to identify the premises.
  - (ii) A statement specifying the conditions that constituted the graffiti nuisance.

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- (iii) A statement specifying that the adult or emancipated minor created, caused, or committed the graffiti nuisance.
- (iv) An accounting of the costs of removal of the nuisance.
- (c) Service of notice and order. The notice and order shall be served upon the adult or emancipated minor in the manner prescribed by Section 61.17.1703(e).
- (d) Proof of service of notice and order. Proof of service of the notice and order shall be certified by written declaration under penalty of perjury, executed by the person effecting service, declaring the time, date, and manner in which service was made.
- (e) Hearings and decisions. Hearings and decisions by hearing examiners shall be governed by Sections 61.17.1705(d) - (p).

61.17.1705. Proceedings against minor and parents or guardians of minor.

- (a) Notice and order. The head of the Neighborhood Services Anti-Graffiti Program may issue a notice and order to a minor and the parent or guardian to recover the expense of abatement from the minor and the parent or guardian. The notice and order shall contain the following:
  - (i) The street address and such other description as is required to identify the premises.
  - (ii) A statement specifying the conditions that constituted the graffiti nuisance.
  - (iii) A statement specifying that the minor created, caused, or committed the graffiti nuisance.
  - (iv) An accounting of the expense of abating the nuisance.
  - (v) A statement advising the minor and the parent or guardian that they may request a hearing to contest the order within thirty (30) calendar days after mailing of the order.
  - (vi) A statement advising the minor and the parent or guardian that they have the option of voluntarily paying the expense of abatement prior

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to the date set for the hearing. If the minor and the parent or guardian choose to pay the expense prior to the date set for hearing, they must so advise the head of the Neighborhood Services Anti-Graffiti Program in writing of the date payment will be made. If the payment is made by that date, the hearing will be taken off the calendar. The minor and parent or guardian may request a continuance of the hearing pursuant to Section . 61.17.1705(j).

- (b) Service of notice and order. The notice and order, shall be served upon the minor and the parent or guardian in the manner prescribed by subsection (e) of this Section.
- (c) Proof of service of notice and order. Proof of service of the notice and order shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, and manner in which service was made.
- (d) Hearing.
  - (i) All requests for hearing shall be made to the head of the Neighborhood Services Anti-Graffiti Program.
  - (ii) All requests for hearing to contest an order shall be made in writing within thirty (30) calendar days after mailing of the Notice and Order.
  - (iii) Whenever the minor or the parent or guardian requests a hearing, the head of the Neighborhood Services Anti-Graffiti Program shall issue a hearing notice to the requesting party allowing that party to appear before a hearing examiner to show cause why the City should not recover the expense of abatement from the minor and the parent or guardian. The hearing notice shall contain a statement that all interested persons may attend and testify at the hearing.
  - (iv) If a request for hearing is not filed within the time set forth in subsection (ii) above, the order shall be deemed final.
- (e) Service of Hearing Notice. The Hearing notice shall be served upon the requesting party either personally or by mailing a copy of such notice by certified mail, postage prepaid, return receipt requested, not less than ten (10) calendar days prior to the hearing date.

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- (1) In the event that the minor or parent or guardian refuses to accept certified, return receipt mail, or cannot personally be served, service may be made by substituted service. In lieu of personal delivery of a copy of the notice, a notice or any amended or supplemental notice may be served by leaving a copy during usual office hours in his/her office with the person who is apparently in charge, and by thereafter mailing by first-class mail a copy of the notice to the owner at the address where the copy of the notice was left. Or, a notice of any amended or supplemental notice may be served by leaving a copy at the owner's dwelling, usual place of abode, or usual place of business in the presence of a competent member of the household or a person apparently in charge of his/her office or place of business, at least 18 years of age, and thereafter mailing by first-class mail a copy of the notice to the owner at the address where the copy was left.
  - (2) In the event the minor or parent or guardian refuses to accept certified return receipt mail or cannot be personally served and has a property manager, or rental agency overseeing the premises, substituted service may be made as set forth in (1) above upon the property manager or rental agency.
  - (3) If the minor or parent or guardian lives out of state and will not accept certified, return receipt mail, then service may be made by first-class mail.
  - (4) If the minor or parent of guardian cannot be located after a diligent search, service may be made by publication in a Sacramento newspaper of general circulation which is most likely to give actual notice to the minor and parent or guardian.
- (f) Proof of service of the hearing notice. Proof of service of the hearing notice shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, and manner in which service was made.
- (g) Failure to effect service. Failure to effect service in any person specified herein shall not invalidate proceedings against any person who is properly served, or relieve any such person from any duty or obligation imposed by the provisions of this section.

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- (h) Hearings—generally. At the time set for hearing, the hearing officer shall proceed to hear the testimony of city staff, , the minor, the parent or guardian, and any other person regarding the city's right to recover the expense of abatement.
- (i) Record of oral evidence at hearing. The proceedings at the hearing shall be recorded by a tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure Section 1094.6, as presently written or hereinafter amended.
- (j) Continuances. The hearing r officer may, upon request of the minor or parent or guardian or upon request of the head of the Neighborhood Services Anti-Graffiti Program, grant continuances from time to time for good cause shown, or upon his or her own motion.
- (k) Oaths The hearing officer or certified shorthand reporter shall administer the oath or affirmation.
- (l) Evidence rules. Government Code of the State of California, Section 11513, Subsections (a), (b), and (c), as presently written or hereinafter amended, shall apply to hearings under this chapter.
- (m) Burden of proof. It must be shown by a preponderance of the evidence that the City should recover the expense of abatement from the minor and the parent or guardian .
- (n) Rights of parties.
  - (i) The parties and anyone who participates  
in a hearing under this chapter may be represented by an attorney or other person of the party's choice.
  - (ii) If a party does not proficiently speak or understand the English language, he or she may provide an interpreter, at his or her own cost, to translate for the party. An interpreter shall not have any involvement in the issues of the case prior to the hearing.
- (o) Official notice. In reaching a decision, official notice may be taken, either

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before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.

- (p) Form and contents of decision; finality of decision.
- (i) The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.
  - (ii) The decision shall also inform the applicant that the time for judicial review is governed by California Code of Civil Procedure 1094.6. Copies of the decision shall be delivered promptly to the parties personally or sent to them by certified mail. The decision shall be final when signed by the hearing examiner and served as provided in this chapter.
- (q) Service of the hearing examiner's decision. Upon issuance of the decision, the head of the Neighborhood Services Anti-Graffiti Program shall serve a copy on the minor and the parent or guardian in the same manner as set forth in Section 61.17. 1705 (e)
- (r) Recovery of expense of abatement against minor and parent or guardian of minor.
- (i) If the hearing officer determines that the City should recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor, the City may provide an accounting of the expense of abatement along with a demand for payment to the minor and the parent or guardian .
  - (ii) The parent or guardian shall be jointly and severally liable with the minor for the expense of abatement pursuant to Government Code Sections 38772, 38773.2 and 38773.6.
  - (iii) If the expense of abatement has not been paid within thirty (30) days from the date of issuing an accounting and demand for payment, or, if no hearing was requested thirty (30) days from the mailing of the notice and order, the unpaid amount 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

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guardian having custody and control of the minor. Prior to recording a notice of lien, the hearing officer shall provide notice pursuant to Government Code Section 38773.2.

- (iv) As an alternative to the lien described in subsection (4), above, the expense of abatement may, pursuant to Government Code Section 38773.6, constitute a special assessment against a parcel of land owned by the minor or by the parent or guardian . The assessment shall be collected as provided for in Government Code Section 38773.6.
- (v) In addition to any other remedy provided in this chapter or available at law, the expense of abatement pursuant to Government Code Sections 38772 shall constitute a personal obligation against the minor and a personal obligation against the parent or guardian .

**61.17.1706. Cumulative Remedies.**

The procedures set forth in this chapter are not exclusive and nothing contained herein shall be deemed to preclude the pursuit of any available remedy, whether it is civil or criminal.

**61.17.1707. Severability**

If any section, subsection, sentence, clause, phrase or portion of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be

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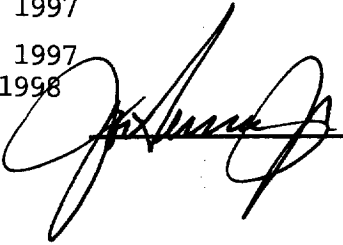
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deemed a separate, distinct and independent provision, and that holding shall not affect the validity of the remaining portion.

DATE PASSED FOR PUBLICATION: December 2, 1997

DATE ENACTED: December 9, 1997

DATE EFFECTIVE: January 8, 1998

  
MAYOR

ATTEST:

  
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