

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA AMENDING CHAPTER 10-17 OF THE SANTA ROSA CITY CODE RELATING TO GRAFFITI

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Purpose and Intent.

(A) The Council finds and declares that:

(1) Graffiti is detrimental to the health, safety, and welfare of the community in that it leads to urban blight; encourages gang activity; is detrimental to property values, business opportunities, and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property.

(2) Graffiti results in visual pollution and is 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.

(B) It is the purpose of this ordinance to provide (1) a program to restrict the possession and sale of graffiti implements and (2) to encourage the prompt removal of graffiti from walls, pavement, structures, and other improvements on both public and private property.

Section 2. Chapter 10-17 of the Santa Rosa City Code is amended to read as follows:

"Chapter 10-17

GRAFFITI ABATEMENT PROGRAM

Sections:

- 10-17.010 Definitions.**
- 10-17.020 Nuisance.**
- 10-17.030 Prohibition of graffiti.**
- 10-17.040 Accessibility to graffiti implements restricted.**
- 10-17.050 Violation after notice.**
- 10-17.060 Parental responsibility.**
- 10-17.070 Penalty for violation.**
- 10-17.080 Standards for graffiti removal.**
- 10-17.090 Ease of removal provisions.**
- 10-17.100 Community education.**
- 10-17.110 Provisions not exclusive.**

10-17.010 Definitions.

(A) "Aerosol container" means any aerosol based container which is capable of spraying indelible paint, ink, dye, or similar substance.

(B) "Etching material" means any etching tool, chemical, paste, or similar material which is capable of being used to etch glass.

(C) "Felt tip marker" means any indelible marker or similar device with a tip containing ink, dye, or similar substance which, when used or applied to a surface, is capable of resulting in a mark at least 3/8" of an inch wide at its widest point.

(D) "Graffiti" means any inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property in the city without the permission of the owner and which is visible from a public right of way or any neighboring property.

(E) "Graffiti implement" means any felt tip marker, etching material, or aerosol container which contains paint, ink, dye, or any similar substance and which is capable of resulting in the placement of graffiti upon any surface or substance, including but not limited to glass, metal, concrete, wood, and plastic.

(F) "Owner" means the owner of record of the property as set forth in the records of the Tax Assessor.

10-17.020 Nuisance.

Graffiti on public or private property, either real or personal, constitutes a public nuisance.

10-17.030 Prohibition of graffiti.

It is unlawful for any person to apply graffiti to any wall, rock, street, bridge, building, fence, gate, tree, or other real or personal property within the City.

10-17.040 Accessibility to graffiti implements restricted.

(A) Display Requirements. No person or business engaged in a commercial enterprise shall display for sale, trade, or exchange any graffiti implement except in an area from which access by the public is securely precluded without employee assistance. Acceptable methods for displaying graffiti implements for sale shall be by containment in: (1) a completely enclosed cabinet or other storage device which shall, at all times except during access by authorized representatives, remain securely locked; or (2) an enclosed area behind a sales or service counter from which the public is precluded from entry; or (3) a completely enclosed cabinet or similar enclosed storage device which is within thirty (30) feet and in plain view of a permanently staffed counter or station. Nothing in this chapter shall relieve such person or business entity from complying at all times with the requirements of California Penal Code section 594.1(c) by posting signs as described therein.

(B) Storage Requirements. No person or business engaged in the business of selling, providing or trading graffiti implements shall store any graffiti implement except in an area inaccessible to the public.

10-17.050 Violation after notice.

It is unlawful for any owner of real property located in the City of Santa Rosa, and for any tenant, occupant, or user of any property therein, to maintain, permit, or allow graffiti to exist thereon, for longer than 72 hours.

10-17.060 Parental responsibility.

Pursuant to Civil Code Section 1714.1(b), where graffiti is applied by a minor, the parents or

legal guardian of the minor shall be jointly and severally liable for the payment of civil damages resulting from the minor's misconduct in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000) for each offense.

10-17.070 Penalty for violation.

It is unlawful for any person, firm, partnership, or corporation to violate any provision or fail to comply with any of the requirements of this ordinance.

(A) A violation of this chapter shall be punished in accordance with City Code Section 1-28.010.

(B) Additional penalties available. Whenever deemed appropriate, it is the City's intent to petition a sentencing court to impose the following additional penalties upon conviction:

(1) Performance of a minimum of 48 hours of community service not to exceed 200 hours over a period up to 180 days. Community service includes graffiti removal service.

(2) That the defendant personally clean up, repair, or replace the damaged property. Or that the defendant, and his parents or guardians if the defendant is a minor, keep the damaged property or other specified property in the City free of graffiti for up to one year. This clean-up, repair, or replacement shall be at the defendant's expense, or at the expense of his/her parents if the defendant is a minor.

(3) For each conviction of a person aged 13 to 21 for violating section 10-17.030 of this ordinance, the City may petition the court to suspend existing driving privileges or delay the issuance of driving privileges in accordance with California Vehicle Code section 13202.6.

Section 10-17.080 Standards for graffiti removal.

Graffiti shall be removed or completely covered in a manner that renders it inconspicuous. When graffiti is painted out, the color used to paint it out shall match the original color of the surface, or the surface shall be completely repainted with a new color that is aesthetically compatible with existing colors and architecture. The removal shall not leave shadows and shall not follow the pattern of the graffiti such that letters or similar shapes remain apparent on the surface after graffiti markings have been removed. If the area is heavily covered with graffiti, the entire surface shall be repainted.

Section 10-17.090 Ease of removal provisions.

(A) Common utility colors and paint type. Any gas, telephone, water, sewer, cable, telephone, and other utilities operating in the City, other than an electric utility, shall paint their above-surface metal fixtures, that are installed after the effective date of this Chapter, with a uniform paint type and color as directed by the City Manager.

(B) Land use entitlement conditions. In approving subdivision maps, conditional use permits, variances, building permits, or other similar land use entitlement or development or design applications, the City may impose one or all of the following conditions, or other similar or related conditions:

(1) Use of anti-graffiti materials on surfaces exposed to public view of a type and nature that is acceptable to the City Manager, or designee.

(2) Use of landscaping to screen or provide a barrier to surfaces that may be prone to graffiti.

(3) Right of access by City to remove graffiti.

(4) Applicants, permittees, and all successors in interest shall provide City with sufficient matching paint and/or anti-graffiti material on demand for use in painting over or removal of graffiti.

(5) Applicants, permittees, and all persons applying for subdivision maps shall, as part of any conditions, covenants and restrictions, covenant that the owners of the lots shall immediately remove any graffiti.

(C) Encroachment permit conditions. All encroachment permits issued by the City may, among other things, be conditioned on the following:

(1) Use of anti-graffiti materials on surfaces exposed to public view of a type and nature that is acceptable to the City Manager, or designee.

(2) Use of landscaping to screen or provide a barrier to the encroaching object.

(3) The right of the City to remove the graffiti or to paint the encroaching object or structure.

(4) Permittee shall provide City with sufficient matching paint and/or anti-graffiti material on demand for use in painting over or removal of graffiti on the encroaching object or structure.

(5) Permittee shall immediately remove all graffiti.

10.17.100 Community education.

The City Manager, or designee, may conduct regular programs to provide community education regarding the prevention of graffiti in coordination with local businesses.

10-17.110 Provisions not exclusive.

This chapter is not the exclusive regulation of graffiti as a nuisance within the City. It supplements and is in addition to any other applicable law.”

Section 3. Environmental Determination. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of this chapter is for any reason held to be invalid and/or unconstitutional by a final decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

Section 5. Effective date. This ordinance shall take effect on the 31st day following its adoption.

IN COUNCIL DULY PASSED AND ADOPTED this 19th day of July, 2005.

AYES: (6) Mayor Bender; Councilmembers Condron, Martini, Pierce, Rabinowitsh, Sawyer

NOES: (0)

ABSENT: (1) Councilmember Blanchard


ABSTAIN: (0)

APPROVED:




Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney