

ORDINANCE NO. 2018-01

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING TITLE 8 OF THE EL CERRITO MUNICIPAL CODE TO ADD CHAPTER 8.42, "GRAFFITI ABATEMENT" RELATED TO THE ABATEMENT OF GRAFFITI

WHEREAS, the spread of graffiti on public and private buildings, walls, signs and other structures or surfaces causes blight within the City; and

WHEREAS, graffiti causes detriment to the City of El Cerrito due to the deteriorated appearance of the subject property as well as a negative impact to the economic vibrancy of adjacent and surrounding properties; and

WHEREAS, many property owners in the City of El Cerrito have requested a program to work in cooperation with the City towards the timely abatement of graffiti; and

WHEREAS, the City may regulate graffiti through its police power under Article XI, section 7, of the California Constitution.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN as follows:

1. Incorporation of Recitals. The City Council finds that the above Recitals are true and correct and are incorporated herein by reference.
2. Amendment of Title 8 of the Municipal Code. Title 8, "Health and Safety," of the El Cerrito Municipal Code is hereby amended to add Chapter 8.42, "Graffiti Abatement" to read as follows:

Chapter 8.42 – GRAFFITI ABATEMENT

8.42.010 Purpose.

The City Council hereby declares that graffiti is blight and a public nuisance and is therefore subject to abatement as prescribed in Chapters 1.08 and 1.14 the El Cerrito Municipal Code.

The purpose of this ordinance is to provide tools for the removal of graffiti, including a voluntary program to assist in the removal of graffiti from public and private property within the City.

8.42.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

"Graffiti" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property without the permission of the property owner or Responsible Party.

"Responsible Party" means any occupant, lessor, lessee, manager, licensee, or other person having control over real or personal property. A responsible party also includes the public or private property owner, as listed in the most current equalized assessment role as maintained by the Contra Costa County's Assessor.

8.42.030 Graffiti Declared a Public Nuisance.

The City Council hereby declares that graffiti is a public nuisance and is subject to abatement as prescribed in this code.

8.42.040 Graffiti Prohibited.

- A. It is unlawful for any person to apply graffiti upon any property within the city.
- B. It is unlawful for any Responsible Party or any other person owning or otherwise being in control of any real or personal property within the city to maintain, permit or allow any graffiti to remain upon such property when the graffiti is visible from the street or other public or private property.

8.42.050 Violations.

A. Violations of this chapter may be enforced by either compliance with the provisions of this chapter or pursuant to the administrative procedures contained in El Cerrito Municipal Code Chapter 1.14. Violations which result in administrative citations may be appealed pursuant to El Cerrito Municipal Code section 1.14.080.

B. The criminal citation procedures contained in El Cerrito Municipal Code Section 1.08 shall apply to violations of this chapter. Violations which result in criminal citations shall be deemed infractions unless deemed a misdemeanor by the City Attorney.

8.42.060 Removal of Graffiti.

A. Removal by Responsible Party.

- 1. It is the responsibility of the Responsible Party to remove graffiti from their property.

2. It is unlawful for any Responsible Party to permit graffiti that has been applied on property to remain for a period of ten (10) calendar days after having been given notice of the violation. The City shall provide written notice of the graffiti to the responsible party pursuant to Chapter 1.14 (Administrative Penalties). The notice shall include information regarding the right to an appeal.

B. Removal of Graffiti by City.

1. As an alternative to process described in Chapter 1.14, the City may remove graffiti with the consent of the Responsible Party pursuant to Section 8.42.070 as part of a Graffiti Abatement Program, administration of which is at the discretion of the City.

8.42.070 Voluntary Consent to Remove Graffiti from Property.

A. Responsible Parties may consent in writing to allow city staff or designees to enter onto their property for graffiti removal purposes. Responsible Parties shall be responsible for and shall reimburse to city the costs of abatement services and related administrative costs. Failure of a Responsible Party to reimburse the city in a timely manner will result in the forfeiture of the Responsible Party to participate in the Graffiti Abatement Program.

B. The Graffiti Abatement Program is offered by the City as time and resources of the City allow. Failure of the City to not remove graffiti does not waive the requirement of the Responsible Party to abate graffiti within ten (10) calendar days of receipt of notice listed in 8.42.060.

C. Consent Forms. Consent forms may be obtained from the City of El Cerrito Community Development Department.

8.42.080 Abatement Upon Failure to Obtain Consent or Removal of Graffiti.

A. Securing Responsible Party's Consent. In the event that the property owner or Responsible Party fails to remove graffiti within the time provided or to file a timely appeal, the City may initiate removal of the graffiti. Prior to entering upon private property or property owned by a public entity other than the City for the purpose of removal of graffiti, the City shall attempt to secure the consent of the Responsible Party.

B. Abatement without Responsible Party's Consent. If the Responsible Party has refused to give consent to the City for entry on terms acceptable to the City, consistent with the provisions of this section, the City may commence abatement of graffiti nuisance and recovery of the expense of abatement proceedings, including but not limited to obtaining a warrant to enter upon the property and perform the work pursuant to the provisions set forth in the Code

of Civil Procedure (commencing at California Code of Civil Procedure section 1822.50).

3. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

4. Compliance with the California Environmental Quality Act (CEQA). The proposed amendment is exempt from CEQA under the general rule that CEQA applies only to projects that have potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

5. Effective Date. This Ordinance shall take effect and be enforced thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on January 16, 2018 and passed by the following vote:

AYES: Councilmembers Abelson, Fadelli, Lyman, Pardue-Okimoto and Mayor Quinto.
NOES: None
ABSENT: None
ABSTAIN: None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on February 6, 2018 and passed by the following vote:

AYES: Councilmembers Abelson, Fadelli, Lyman, Pardue-Okimoto and Mayor Quinto.
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:



Gabriel Quinto, Mayor

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ATTEST:



Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2018-01 of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 6th day of February 2018; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this 8th day of February, 2018.



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Cheryl Morse, City Clerk

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