

ORDINANCE NO. 506

**AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES
AMENDING CHAPTER 9.28 OF TITLE 9 OF THE RANCHO PALOS
VERDES MUNICIPAL CODE REGARDING THE CITY'S PROCEDURES
FOR PREVENTION AND REMOVAL OF GRAFFITI.**

THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES
ORDAIN AS FOLLOWS:

Section 1. Chapter 9.28 ("Graffiti Prevention and Removal") of Title 9 of the
Rancho Palos Verdes Municipal Code is hereby amended in its entirety to read as
follows:

"Chapter 9.28

GRAFFITI PREVENTION AND REMOVAL

Sections:

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| 9.28.010 | Purpose. |
| 9.28.020 | Definitions. |
| 9.28.030 | Sale and possession. |
| 9.28.040 | Display and signage. |
| 9.28.050 | Prevention of graffiti through land use entitlements. |
| 9.28.060 | Reward. |
| 9.28.070 | Graffiti prohibited. |
| 9.28.080 | Graffiti constitutes a nuisance. |
| 9.28.090 | Importing graffiti. |
| 9.28.100 | Graffiti removal requirement. |
| 9.28.110 | Abatement of graffiti by city with consent of responsible party. |
| 9.28.120 | Abatement of graffiti by city without consent of responsible party. |
| 9.28.130 | Assessment of costs against property owner or graffiti perpetrator. |
| 9.28.140 | Lien procedure. |
| 9.28.150 | Special assessment procedure. |
| 9.28.160 | Parental liability. |
| 9.28.170 | Restitution. |
| 9.28.180 | Criminal penalties. |
| 9.28.190 | Cumulative remedies. |

- 9.28.010 Purpose.**

The purpose of this chapter is to establish a program for removal of graffiti on both public and private property and to establish regulations designed to prevent the further spread of graffiti in the city.

9.28.020 Definitions.

For the purposes of this chapter, the following words and terms shall have these ascribed meanings:

(a) *Adhesive Sticker* means any sheet of paper, fabric, plastic or other material with an adhesive, paste, or gummed backing, which, when applied or affixed to any surface, either creates a permanent contact or is not easily removable without the use of solvents.

(b) *Aerosol paint container* means any aerosol container, regardless of the material from which it is made, that is adapted or made for the purpose of spraying paint, undercoating, spray insulation, or other substance capable of defacing property.

(c) *City employee* means a city code enforcement officer or other individual designated by the director of community development.

(d) *Costs of the abatement* may include, but are not limited to, court costs, attorney's fees, costs of removal of the graffiti or other inscribed material, costs of repair or replacement of defaced real or personal property, administrative costs, and law enforcement costs incurred by the city and/or any other public agency. The prevailing party shall recover attorney's fees only in those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorney's fees, and in no case shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the city in the action or proceeding.

(e) *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.

(f) *Etching tool* means any sharp or pointed instrument that is capable of etching or marking glass, plastic, wood, metal, or concrete surfaces, including, but not limited to, picks, scribes, awls, chisels, markers, and etchers, or any masonry or glass drill bit, carbide drill bit, glass cutter, grinding stone, etching cream or acid etching solution.

(g) *Exterior surface* means any building, wall, fence, tree, sidewalk, curb, storage container, vehicle, building material, sign, pole, temporary facility, large waste container, portable toilet, structure or real or personal property.

(h) *Felt tip marker* means any broad-tipped indelible marker pen or similar implement containing ink or other pigmented liquid that is not water-soluble.

(i) *Graffiti* means any inscription, word, figure, mark, adhesive sticker or design that is written, sprayed, marked, etched, scratched, engraved, drawn, painted, labeled, pasted, applied or affixed on any surface of public or private real or personal property within the city to the extent the same was not authorized in advance by the owner or occupant thereof.

(j) *Graffiti implement* means any implement capable of marking, scarring, damaging, or defacing any surface to create graffiti, including, but not limited to, aerosol paint containers, felt tip markers, paint sticks, etching tools, adhesive stickers, spray actuators, or any other similar implement.

(k) *Graffiti perpetrator* means any individual, including a minor, who causes, commits, solicits or commands another person, or aids or abets the application of graffiti.

(l) *Paint stick* means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and that, upon application, leaves a visible mark on the surface at least one-sixteenth (1/16) of an inch in width that is not water soluble.

(m) *Removal of graffiti, graffiti removal, abatement of graffiti, and graffiti abatement* include the repair or replacement of the portion of the real or personal property defaced by graffiti in the event that graffiti cannot be removed cost effectively.

(n) *Responsible party* means any person who owns, possesses, occupies, or otherwise has responsibility for the repair or maintenance of property on which graffiti exists.

(o) *Spray actuator* (also known as a spray tip, nozzle, or button) means an object or device that is capable of being attached to an aerosol or other paint container for the purpose of spraying the substance contained therein.

9.28.030 Sale and possession.

(a) It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to anyone under the age of eighteen (18) years without the written consent of a parent or legal guardian of the minor.

(b) It shall be unlawful for any person to possess any graffiti implement, with the intent to use or apply graffiti, while in or upon any public facility, park, playground, swimming pool, recreational facility or other public building or structure owned or operated by the city or any other public entity, including property owned by a school district, or while in or within fifty (50) feet of a storm channel or similar type of infrastructure, unless otherwise authorized by the city or the public entity owning the public property. This section shall not apply to authorized employees of the city or other public entity or to an individual or authorized employee of an individual, agency or company under contract with the city or other public entity and acting within the scope of that contract.

(c) A city employee is authorized to post a notice at appropriate locations indicating that pursuant to California Penal Code Section 594.1(d), no person shall carry on his or her person and in plain view to the public etching cream or an aerosol

(d) It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on public property, grounds, facilities, buildings, structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without consent of the owner or occupant of such private property. The provisions of this section shall not apply to the possession of felt tip markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class or activity at the school that formally requires the possession of felt tip markers. The burden of proof in any prosecution for violation of this section shall be upon the minor student to establish the need to possess a felt tip marker.

9.28.040 Display and signage.

(a) Any retailer selling or offering for sale graffiti implements shall display at a conspicuous location a legible sign measuring not less than twelve inches (12") by twelve inches (12") with letters at least half of an inch ($\frac{1}{2}$ ") in height which states:

"It is unlawful for any person to sell or give to any individual under the age of eighteen years any etching cream or aerosol container of paint that is capable of defacing property, except as provided in Section 594.1 of the California Penal Code. 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."

(b) It shall be unlawful for any retailer to display for sale, trade, loan, or exchange any graffiti implement except in an area from which the public shall be securely precluded from entering without employee assistance. Two such acceptable methods for displaying graffiti implements for sale shall be by containment in: (i) a completely enclosed cabinet or other storage device, which shall be permanently affixed to a building or structure, and which shall remain securely locked at all times except during access by authorized representatives; or (ii) an enclosed area behind a sales or service counter from which the public is precluded from entry. Nothing herein shall relieve such a retailer from, at all times, complying with the requirements of subsection (a) of this section or California Penal Code Section 594.1(c) by posting signs as described therein.

(c) Any retailer who displays, stores, or permits the display or storage of any graffiti implement in violation of the provisions of this section shall be personally liable for the full costs of the abatement incurred by any party in connection with the removal of graffiti, the repair of any real or personal property containing graffiti, or such party's prosecution of a civil claim for reimbursement or damages resulting from such graffiti removal or property repair, arising from the use by any person, including a minor, of

9.28.050 Prevention of graffiti through land use entitlements.

(a) In approving tentative or parcel maps, subdivision maps, conditional use permits, variances, or other discretionary land use entitlements, the city may impose conditions reasonably related to the control of graffiti, the mitigation of the impacts of graffiti, or both. Such conditions may include, without limitation, any or all of the following:

(1) Require installation and use of anti-graffiti materials, as approved by the director of community development or his or her designee, on surfaces that are likely to be graffiti attracting surfaces.

(2) Require installation and use of landscaping to provide a barrier to surfaces prone to graffiti or those that are likely to be graffiti attracting surfaces.

(3) Require installation and use of additional lighting to areas that are likely to be graffiti attracting surfaces and to adjacent areas.

(4) Require immediate removal of any graffiti from the property.

(5) Provide right of access by city employees and agents to remove graffiti from any surface that is open and accessible from city property or any public right-of-way.

(6) Supply the city with sufficient matching paint or anti-graffiti material on demand for use in the abatement of graffiti by the city.

(b) In approving encroachment permits, the city may impose conditions reasonably related to the control of graffiti, the mitigation of the impacts of graffiti, or both. Such conditions may include, without limitation, any or all of the following:

(1) Require installation and use of anti-graffiti materials, as approved by the director of community development or his or her designee, on the encroaching object or structure.

(2) Require immediate removal of any graffiti from or near the encroaching object or structure.

(3) Provide right of access by city employees and agents to remove graffiti from or near the encroaching object or structure.

(4) Supply the city with sufficient matching paint or anti-graffiti material on demand for use in the abatement of graffiti by the city.

9.28.060 Reward.

(a) Pursuant to Section 53069.5 of the California Government Code, the city may offer a reward for information leading to the apprehension and conviction of any person who places graffiti on any public or private real or personal property in such amounts approved by the city council. In the event of multiple contributors of information, the city manager shall divide the reward amount in a manner he or she shall deem appropriate.

(b) The city manager shall specify the manner in which claims for rewards under this section shall be filed with the city, and such claims shall be filed accordingly.

(c) The graffiti perpetrator shall be liable for any rewards paid pursuant to this section and, if that person is an unemancipated minor, the parent(s) or legal guardian(s) having custody and control of said minor shall be jointly and severally liable for any rewards paid pursuant to this section. In the event of damage to public or private real or personal property, the graffiti perpetrator, or if that person is an unemancipated minor, the parent(s) or legal guardian(s) having custody and control of said minor, must reimburse the city for any reward paid.

(d) No law enforcement officer, municipal officer, official or employee of the city shall be eligible for a reward made pursuant to this section.

(e) The city manager shall not allow a claim for a reward unless the city employee investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied. The city manager shall have full discretion as to whether the city shall pay the award or a portion thereof to the informant.

9.28.070 Graffiti prohibited.

(a) It shall be unlawful for any person to cause, solicit or command another person in, or aid or abet, in the application of graffiti onto any surface on any public or private real or personal property.

(b) It shall be unlawful for any person to maintain graffiti on any surface on any public or private real or personal property.

(c) Each day that graffiti is maintained constitutes a new and separate offense and is subject to all penalties set forth in this Code.

9.28.080 Graffiti constitutes a nuisance.

The existence of graffiti within the city limits constitutes a public and private nuisance and may be abated according to the provisions and procedures contained in this chapter.

9.28.090 Importing graffiti.

No person shall import any exterior surface into the city that is inscribed with graffiti. No person shall permit any graffiti to remain on any exterior surface owned or possessed by such person. When the owner of an exterior surface, such as a portable toilet or large waste container, is different from the owner of the premises, it shall be the responsibility of the owner of the exterior surface to maintain said surface free from graffiti.

9.28.100 Graffiti removal requirement.

(a) Any graffiti perpetrator shall remove the graffiti in a manner prescribed by a city employee within twenty-four (24) hours after notice by the city employee. Failure of any graffiti perpetrator to remove graffiti shall constitute an additional violation of this chapter. Where an unemancipated minor is the graffiti perpetrator, the parent(s) or legal guardian(s) having custody and control of the minor shall also be responsible for such removal.

(b) The responsible party must cause immediate removal of the graffiti on the property and may not permit or maintain graffiti on the property for a period in excess of three (3) days after service of notice by a city employee regarding the graffiti on the property.

9.28.110 Abatement of graffiti by city with consent of responsible party.

(a) Whenever a city employee determines that graffiti is located on public or private real or personal property within the city so as to be capable of being visible from any adjacent property (private or public), street, sidewalk, alley, other public right-of-way or other area open to the public, the city employee may provide for the use of city funds for the abatement of the graffiti, or if the graffiti cannot be abated cost effectively, the repair or replacement of the portion of the property that was defaced, upon the following conditions:

(1) In abating the graffiti, the city employee shall not authorize painting, repair or replacement of an area more extensive than where the graffiti is located, except where the city owns the exterior surface and the city employee determines that a more extensive area must be repainted, repaired or replaced, or where the responsible party agrees to pay for the costs of repainting, repairing or replacing a more extensive area.

(2) Where the exterior surface is owned by a public entity other than the city or is privately owned, the city employee may authorize the removal of graffiti only after securing the consent of the public entity having jurisdiction over the exterior surface or the responsible party for the privately owned property, and only after such entity or responsible party executes an appropriate release and right of entry form permitting such graffiti removal.

(b) As an alternative to the procedure provided in subsection (a) of this section, the city employee shall have the authority to cause the abatement and removal of graffiti on a privately owned exterior surface within the city so as to be visible from any adjacent property (private or public), street, sidewalk, alley, other public right-of-way or other area open to the public in accordance with the procedure set forth in section 9.28.120 of this chapter.

9.28.120 Abatement of graffiti by city without consent of responsible party.

(a) If the city employee cannot obtain the consent of the responsible party, the city employee may cause the abatement of graffiti which is located on a private property within the city and which can be viewed from any adjacent property (private or public), street, sidewalk, alley, other public right-of-way or other area open to the public at the responsible party's expense as a public nuisance pursuant to the following conditions:

(1) The city employee shall issue to the responsible party for the affected property a three (3) day notice of intention to abate the graffiti as a public nuisance and shall serve such notice on the responsible party in any of the following methods: a) by personal service on the responsible party; b) by posting at a conspicuous place on the property or abutting public right-of-way; or c) by sending a copy of the notice by United States mail addressed to the owner at the address shown on the last available assessment roll, or if the owner's address is unknown, then in care of the property address. Service shall be complete on the day the notice is personally served or posted, or two days after it is mailed. The responsible party shall have three (3) days from the date of service of the notice to remove the graffiti or be subject to abatement of graffiti by the city and assessment of the costs of the abatement.

(2) The notice shall be on city letterhead in substantially the following form:

NOTICE OF INTENT TO ABATE GRAFFITI

*Pursuant to Chapter 9.28 of Title 9 of the Rancho Palos Verdes Municipal Code, NOTICE IS HEREBY GIVEN that you are required at your expense to remove or paint over the graffiti in existence on the property located at (address) _____
_____ Rancho Palos Verdes, California within three (3) days of (date)
_____.*

The graffiti constitutes a public nuisance. If you fail to comply with this order, City employees or private contractors employed by the City will enter upon your property and abate the public nuisance by removing or painting over the graffiti. The full costs of the abatement by the City employees or private contractors, which may include, but are not limited to, court costs, attorney's fees, costs of removal of the graffiti or other inscribed material, costs of repair or replacement of defaced real or personal property, administrative costs, and law enforcement costs, will be assessed upon your property either by a recorded lien or by special assessment.

Any person having any objections to or interest in said matters may file within three (3) days from the date listed above a written appeal to the City Manager stating the reasons the person believes that the City should not abate the graffiti. Unless an appeal is filed with the City Manager or the graffiti is otherwise abated, the City will proceed with the abatement of the graffiti on your property at your expense without further notice at the conclusion of this three (3) day period.

(b) Failure of the city manager to receive a timely appeal constitutes a waiver of the right to contest a notice of intention to abate. In this event, the notice of intention to abate is final and binding. If an appeal is timely filed, the city manager shall hold a noticed hearing on the objections to the abatement within ten (10) days of receiving the appeal, and any interested person shall be given a reasonable opportunity to be heard at that hearing. Notice of the decision of the city manager shall be given as provided in subsection (a)(1) of this section for the notice of intent to abate graffiti. If the city manager denies the appeal, the property owner shall have three (3) days to remove the graffiti from the date of service of notice of the city manager's decision. The decision of the city manager shall be final.

(c) If no appeal is filed, or if the appeal is denied following a hearing, and if the responsible party fails to cause the graffiti to be removed by the designated date or such continued date thereafter as the city manager approves, then the city employee shall cause the graffiti to be abated by city forces or private contract, and the city or its private contractor may enter upon the premises for such purposes after obtaining a warrant authorizing the entry upon the property for abatement of the graffiti.

9.28.130 Assessment of costs against property owner or graffiti perpetrator.

(a) The city employee shall keep an accounting of the costs of the abatement of the graffiti and shall submit to the city council an itemized report showing such costs of the abatement. The city council may modify the report, as the council deems necessary, and shall confirm the report by motion or resolution.

(b) The city employee may elect to recover the costs of abatement by lien in accordance with section 9.28.140 of this chapter, by special assessment in accordance with section 9.28.150 of this chapter, or in any other manner provided or authorized by law.

9.28.140 Lien procedure.

Pursuant to California Government Code Sections 38773.1 and 38773.2, the city employee may elect that the costs of the abatement, as confirmed by the city council, shall constitute a lien against: the property on which the graffiti was maintained; the property of the graffiti perpetrator; and/or, if the graffiti perpetrator is a minor, the property of the parent(s) or legal guardian(s) having custody and control of the minor. The following procedure is required:

(a) Prior to the recordation of the lien, the city employee shall issue notice of the lien to the owner of record of the parcel of land, based on the last equalized assessment roll or the supplemental roll, whichever is more current. Notice of the lien shall be served in any manner of service allowed pursuant to California Government Code Sections 38773.1(b) or 38773.2(b), as may be amended from time to time.

(b) If the total costs of the abatement are not paid to the city in full within ten (10) days after the date of service of the notice, the city clerk or his or her designee may record, in the county recorder's office in the county in which the parcel of land is located, a lien, which, from the date of recording, shall have the force, effect, and priority of a judgment lien and shall continue in full force and effect until the entire amount due is paid in full.

(c) The lien shall specify: the amount of the lien; the city as the agency on whose behalf the lien is imposed; the date of the abatement order; the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed; and the name and address of the recorded parcel owner.

(d) If the lien is discharged, released or satisfied, either through payment or foreclosure, the city clerk or his or her designee shall record notice of the discharge containing the information specified in subsection (c) of this section as to the lien and any other lien recorded against other parties pursuant to the same incidence of graffiti. Any such liens and releases of liens shall be indexed in the grantor-grantee index.

(e) The city may bring an action to satisfy a lien through foreclosure.

(f) If the county recorder assesses any fee to the city for processing and recording the lien and providing notice to the property owner, the city shall recover this amount from the property owner as a part of the foreclosure action to enforce the lien.

9.28.150 Special assessment procedure.

Pursuant to California Government Code Sections 38773.5 and 38773.6, the city employee may elect that the costs of the abatement, as confirmed by the city council, shall constitute a special assessment against: the property on which the graffiti was maintained; the property of the graffiti perpetrator; and/or, if the graffiti perpetrator is a minor, the property of the parent(s) or legal guardian(s) having custody and control of the minor. The following procedure is required:

(a) The city employee shall send notice by certified mail to the property owner if the owner's identity can be determined from the county assessor's or county recorder's records. This notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three (3) years by the tax collector for unpaid delinquent assessments. Failure of the property owner to receive notice shall not affect the tax collector's power of sale.

(b) If the total costs of the abatement are not paid to the city in full within ten (10) days after the date of service of the notice, the city employee may cause the costs of

(c) Notices or instruments relating to the abatement proceeding or special assessment may be recorded.

9.28.160 Parental liability.

(a) Pursuant to California Government Code Section 38772(c), the county probation officer shall report to the city clerk the names and addresses of the parent(s) or legal guardian(s) having custody and control of a minor graffiti perpetrator when the defaced property is in the city.

(b) Pursuant to California Civil Code Section 1714.1, the parent(s) or legal guardian(s) having custody and control of a minor shall be personally liable for any act of willful misconduct by a minor that results in graffiti for all purposes of civil damages, including court costs and attorney's fees to the prevailing party. The parent(s) or legal guardian(s) having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct, including any and all costs to the City incurred in connection with the removal of said graffiti, not to exceed twenty-five thousand dollars (\$25,000).

9.28.170 Restitution.

The city is responsible for repairing, replacing, or restoring public or private property that has been defaced with graffiti when: public or private property displays graffiti; the city employee determines that efforts to compel the property owner to repair, replace, or restore the property have been unsuccessful; and the city employee determines that, for the public health, safety and welfare, the city is required to undertake the abatement action in order to protect the community from the continued nuisance conditions. Upon completion of the work required to abate the graffiti, the costs of the abatement shall either: be assessed against the property owner, pursuant to sections 9.28.130 through 9.28.150 of this chapter; or be submitted to the district attorney or local law enforcement in order to obtain restitution from a criminal defendant, including from a minor and the parent(s) or guardian(s) having custody and control of the minor.

9.28.180 Criminal penalties.

(a) Any person violating this chapter shall be guilty of a misdemeanor as defined in chapter 1.08 of title 1 of this Municipal Code.

(b) Whenever the city employee deems it appropriate, it is the city's intent to petition a sentencing court to impose any or all of the following additional penalties or conditions of any grant or probation, diversion, deferred entry of judgment, or other court supervision (including upon a determination that a minor is to be a ward of the court as a result of committing an act of vandalism or graffiti) upon conviction:

(1) Assess fines in accordance with chapter 1.08 of title 1 of this Municipal Code. In the case of a minor, the parent(s) or legal guardian(s) having custody and control of the minor shall be jointly and severally liable with the minor for the payment of all fines.

(2) For an individual who is 13 years or older in age, suspend or delay the issuance of a driver's license, pursuant to California Vehicle Code Section 13202.6.

(3) Order community service with a request that:

(i) The graffiti perpetrator shall perform not less than forty (40) hours of community service for the first offense, not less than eighty (80) for the second, and not less than one hundred twenty (120) for a third or subsequent offense;

(ii) If the graffiti perpetrator is a minor, at least one parent or guardian having custody and control of the minor shall be in attendance a minimum of fifty percent (50%) of the assigned community service; and

(iii) Reasonable effort be made to assign the graffiti perpetrator to a type of community service that is reasonably expected to have the most rehabilitative effect on the graffiti perpetrator, including, if possible, community service that involves graffiti removal.

(4) Pursuant to California Government Code Section 38773.7, upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property or a person described as a "minor" or "other person" as in California Government Code Section 38772(d)(3) is responsible for graffiti, impose treble the costs of the abatement.

9.28.190 Cumulative remedies.

The remedies provided in this chapter are in addition to and do not supersede or limit any other remedies and penalties available under provisions of other applicable city ordinances, the laws of the State of California, or the laws of the United States."

Section 2. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the

