

Regular Council Meeting

February 22, 2024



CITY OF FRESNO
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Supplement Packet

ITEM(S)

2-E (ID 24-263)

Bill (For Introduction) - Amending the Graffiti Abatement Ordinance, FMC Section 9-2514(e) to amend the violations imposed for graffiti abatement and adding Article 23 to Chapter 10 of the Fresno Municipal Code, to protect public and private property from acts of vandalism and defacement.

Contents of Supplement: Staff Report and Ordinance

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

REPORT TO THE CITY COUNCIL

FROM: JERRY P. DYER, Mayor
Office of the Mayor & City Manager

LUIS CHAVEZ, Councilmember
Council District 5

GARRY Bredefeld, Councilmember
Council District 6

BY: KELLI FURTADO, Chief of Staff
Office of the Mayor & City Manager

SUBJECT

..Title

Bill (For Introduction) – Amending the Graffiti Abatement Ordinance, Fresno Municipal Code Section 9-2514(e) to amend the violations imposed for graffiti abatement and adding Article 23 to Chapter 10 of the Fresno Municipal Code, to protect public and private property from acts of vandalism and defacement.

..Body

RECOMMENDATION

Staff recommends amending the Graffiti Abatement Ordinance, Fresno Municipal Code (MSC) Section 9-2514(e) to amend the violations imposed for graffiti abatement and adding Article 23 to Chapter 10 of the FMC, to protect public and private property from acts of vandalism and defacement.

EXECUTIVE SUMMARY

As part of the Dyer Administration's focus on beautification and public safety, the proposed changes are part of a collaborative, cross-departmental and cross-agency effort to protect public and private property from acts of vandalism and defacement. Graffiti is an attractive nuisance and a blight on the community. It creates fear, depreciates property values and projects a negative image to visitors. While Fresno's Graffiti Abatement Team does a remarkable job of removing graffiti in a timely manner, it is still a public nuisance that plagues residents and business owners throughout the city. While graffiti seems like a rampant issue, it has been estimated that a small number of individuals are responsible for the majority of this public nuisance.

The Administration is working with the City Attorney's Office, the Fresno Police Department, the Fresno County District Attorney's Office and others to identify the most prolific offenders, and work to ensure they are held accountable. As such, modifications to the Fresno Municipal Code are being proposed.

The Graffiti Abatement Ordinance, FMC Section 9-2514(e) will amend the violations imposed for graffiti abatement. Specifically, the section is enhanced to allow for prosecution to the fullest extent

possible under the California Penal Code and other applicable state statutes. The proposed amendments also allow for a range of fines between \$10,000 and \$50,000.

Additionally, adding Article 23 to Chapter 10 of the Fresno Municipal Code will help to protect public and private property from acts of vandalism and defacement by providing additional enforcement tools and to enhance the appropriate agencies' ability to vigorously prosecute this crime. For example, acts of graffiti-vandalism occurring within the city shall be prosecuted by the City Attorney's Office. This addition addresses the option to hold parents or legal guardians accountable of minors who deface property, as well as additional penalties such as performing community service, helping remove graffiti and suspension or delay of the issuance of driver's licenses upon a graffiti-vandalism conviction.

ENVIRONMENTAL FINDINGS

This is not a project pursuant to section 15378 of the California Environmental Quality Act Guidelines.

LOCAL PREFERENCE

Not applicable since this is not a bid or award of a contract.

FISCAL IMPACT

There is no proposed impact to the general fund.

Attachment: Ordinance

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING THE GRAFFITI ABATEMENT ORDINANCE, FMC SECTION 9-2514(E) TO AMEND THE VIOLATIONS IMPOSED FOR GRAFFITI ABATEMENT AND ADDING ARTICLE 23 TO CHAPTER 10 OF THE FRESNO MUNICIPAL CODE, TO PROTECT PUBLIC AND PRIVATE PROPERTY FROM ACTS OF VANDALISM AND DEFACEMENT.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 9-2514(e) of the Fresno Municipal Code is amended to read:

SECTION 9-2514(e) – Violation. Any violation of Section 9-2514 shall be a misdemeanor [and shall be prosecuted to the fullest extent possible under the California Penal Code Section 594 and other applicable state statues]. ~~Alternatively, an administrative citation carrying the following [F]ines [may range from ten thousand dollars (\$10,000) to Fifty thousand dollars (\$50,000) and] may be imposed pursuant to Section[s] 1-306 [and 10-2304] of this Code.~~

~~(1) If the amount of defacement, damage, or destruction is fifty thousand dollars (\$50,000) or more the administrative citation shall not carry a fine in excess of fifty thousand dollars (\$50,000).~~

~~(2) If the amount of defacement, damage, or destruction is five thousand dollars (\$5,000) or more, but less than fifty thousand dollars (\$50,000) the administrative citation shall not carry a fine in excess of ten thousand dollars (\$10,000).~~

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Date Adopted:
Date Approved
Effective Date:

City Attorney Approval: AMK

Ordinance No.

~~(3) If the amount of defacement, damage, or destruction is four hundred dollars (\$400) or more, but less than five thousand dollars (\$5,000) the administrative citation shall not carry a fine in excess of one thousand dollars (\$1,000).~~

~~(4) If the amount of defacement, damage or destruction is less than four hundred dollars (\$400) the administrative citation shall not carry a fine in excess of five hundred dollars (\$500).~~

SECTION 2. Article 23 is hereby added to Chapter 10 of the Fresno Municipal Code to read:

ARTICLE 23

GRAFFITI

Section	10-2301.	Purpose and Intent.
Section	10-2302.	Graffiti as a Public Nuisance.
Section	10-2303.	Unlawful to Apply Graffiti.
Section	10-2304.	Violation, Penalties and Civil Liability of Parents.

SECTION 10-2301. PURPOSE AND INTENT.

(a) The Council of the City of Fresno finds and determines as follows:

(1) Graffiti on public or private property is a blighting element which leads to depreciation of the value of property which has been targeted by such vandalism and depreciates the value of the adjacent and surrounding properties to the extent that graffiti creates a negative impact upon the entire city.

(2) Graffiti shall be defined as set forth in Fresno Municipal Code Section 9-215(b)(2).

(3) The Council of the City of Fresno (the City) finds and determines that graffiti is obnoxious and a public nuisance, and must be eliminated by means of prevention education, and abatement to avoid the detrimental impact of such graffiti on the city and its residents to prevent the further spread of graffiti.

(b) The purpose of this ordinance is to adopt state statutes permitting cities to provide additional remedies and penalties against persons committing acts of graffiti.

(c) It is the purpose and intent of the City Council, through the adoption of this article, to provide additional enforcement tools to protect public and private property from acts of vandalism and defacement, including the application of graffiti on privately and publicly owned walls and structures. Such acts obstruct and are destructive of the rights and values of private property owners as well as the total community. It is the further intent of the City Council, through the adoption of this article, to provide notice to all of those who disregard the property rights of others that the law enforcement agencies of the City, the police department and the district attorney's office will strictly enforce the law and vigorously prosecute those persons engaging in the defacement of public and private properties.

(d) For purposes of this ordinance, graffiti does not refer to a style of art. This ordinance is intended to address the application of graffiti that does not have the prior consent of the property owner and is a form of vandalism. It is not intended to address the content or the artistic merit of

the graffiti or other art or messaging on property. Through other policies and programs and as a graffiti deterrent, the City Council may wish to encourage permissive murals or art work on properties as a means of discouraging or abating unconsented to graffiti.

SECTION 10-2302. GRAFFITI AS A PUBLIC NUISANCE. The City Council hereby declares and finds that Graffiti is a public nuisance subject to abatement according to the provisions and procedures contained in the Fresno Municipal Code.

SECTION 10-2303. UNLAWFUL TO APPLY GRAFFITI. It is unlawful and a violation of the Fresno Municipal Code and this Chapter for any person to write, paint, spray, chalk, etch, or otherwise apply Graffiti on public or privately owned buildings, signs, walls, permanent or temporary structures, places, or other surfaces located on public or privately owned property within the City.

SECTION 10-2304. VIOLATION, PENALTIES AND CIVIL LIABILITY OF PARENTS.

(a) Every person who maliciously defaces with graffiti or other inscribed material, with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism.

(b) Criminal Penalties. Any violation of this chapter shall be prosecuted to the fullest extent possible under California Penal Code Section 594 and other applicable state statutes, which may include fines ranging from ten thousand dollars (\$10,000) to fifty thousand dollars

(\$50,000). (1) If the amount of defacement, damage or destruction is four hundred dollars (\$400) or more, vandalism is punishable by imprisonment pursuant to this chapter in a county jail not to exceed one year, or by a fine of not more than ten thousand dollars (\$10,000), or if the amount of defacement, damage, or destruction is ten thousand dollars (\$10,000) or more, by a fine of not more than fifty thousand dollars (\$50,000), or by both fine and imprisonment.

(c) **Additional Penalties Available.** The following additional penalties may be imposed against a person who violates any provision of this chapter:

(1) Litter or graffiti cleanup pursuant to California Vehicle Code Section 42001.71 upon conviction of violation of California Vehicle Code Section 23111, 23112 or 23113(a);

(2) Suspension or delay of issuance of a driver's license pursuant to California Vehicle Code Section 13202.6 upon a graffiti-vandalism conviction;

(3) Performance of community service, including graffiti removal service by a minor determined to be a ward of the court as a result of committing a vandalism-related offense in the city of Fresno, as provided in California Welfare and Institutions Code Section 727.5;

(4) **Misdemeanor and Felony Prosecution.** All acts of graffiti-vandalism occurring within the city shall be prosecuted by the

City Attorney's Office as misdemeanors pursuant to this chapter, except for acts of graffiti-vandalism punishable as felonies under state law, shall be in the jurisdiction of the Fresno County District Attorney's Office;

(5) Civil Liability of Parents. In addition to pursuing criminal charges for violations of this chapter, the City Attorney may file civil complaints against the parents or legal guardians of minors who deface public property and seek recovery for the property damage, cost of graffiti removal, police investigative costs, as well as the City Attorney's fees and costs, up to twenty-five thousand dollars (\$25,000.00) for each tort of the minor. Pursuant to Civil Code Section 1714.1, any act of willful misconduct of a minor which results in the defacement of property of another with paint or a similar substance is imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, including court costs, and attorney's fees, and the parent or guardian having custody and control is jointly and severally liable with the minor for any damages resulting from the willful misconduct of the minor, not to exceed twenty-five thousand dollars (\$25,000.00) for each tort of the minor;

(6) Violation. A violation of any of the provisions of this chapter shall constitute a nuisance as defined in Fresno Municipal Code Section 10-605 and may be abated by the City through the

process and procedure set forth in Section 9-2514 or through civil process by means of restraining order, preliminary or permanent injunction, or in any other manner provided by law or this code for the abatement of such nuisances;

(7) Civil Penalties. Any person, firm or corporation who violates any provision or fails to comply with any requirement or provision of this chapter shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. Each application of Graffiti on the same property, but at different times is considered a separate act subject to citation. Each act of Graffiti on a separate piece of real or personal property is a separate act subject to citation even if occurring on the same general time and day. Each person who participates in an act of Graffiti is subject to a separate administrative citation or civil penalty. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. The civil penalty prescribed by this subsection shall be assessed and recovered and a civil action brought by the City Attorney or by any member of the public in any court of competent jurisdiction. The civil

penalty prescribed by this subsection may be sought in addition to, and not in lieu of, any other remedy, including, but not limited to, criminal remedies, injunctive relief, specific performance or any other remedy. In the event any such action is brought by a member of the public, any civil penalty awarded shall be awarded to and on behalf of the City or other person whose property is damaged.

SECTION 3. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2024.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2024
Mayor Approval/No Return: _____, 2024
Mayor Veto: _____, 2024
Council Override Vote: _____, 2024

TODD STERMER
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Angela M. Karst Date
Senior Deputy City Attorney