

CHAPTER TWO: PROHIBITED ACTIVITIES

Subchapter 2.02: Graffiti Prevention

2.02.010 Definitions.

Aerosol paint container shall mean any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint or other substance capable of defacing property.

Felt tip marker shall mean any indelible marker or similar implement with a tip which, at its broadest width is greater than one-eighth (1/8) inch, containing an ink that is not water soluble.

Graffiti shall mean any writing, drawing, defacing, marring, inscribing, scratching, painting or affixing of markings upon any real or personal property, which is unauthorized by the property owner or person in possession of the subject property or which can be seen by any person using the public right-of-way or from adjacent properties.

Graffiti implement shall mean an aerosol paint container, felt tip marker, a paint stick, a scribe or gummed label.

Gummed label shall mean sticker, stamp or item applied self-adhesive glue, gum, tape or any other type of adhesive which is larger than one inch by one inch and which can be applied to any surface, wall, window or sign regardless of material.

Paint stick shall mean 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 upon application, leaving a mark at least one-eighth (1/8) inch in width, and not water-soluble.

Scribe shall mean an implement which permanently etches glass.

Unreasonable period shall mean a period of time exceeding fifteen days from the day the owner, lessee, renter or occupant has been lawfully notified of the placement of the graffiti.

[History: formerly § 2.601; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.020 Unlawful Property Nuisance.

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of any property in the Town to maintain or allow to be maintained graffiti on such property for an unreasonable period. This section shall apply to both public and private property in all zoning districts.

[History: formerly § 2.602; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.030 Graffiti Prohibited.

(a) No person shall place graffiti or other writing upon any public or privately owned permanent building, structure or place located on publicly or privately owned real property within the Town.

(b) No person owning or otherwise in control of any real property within the Town shall permit or allow any graffiti to be placed upon or remain on any permanent structure located on such property when the graffiti is visible from the street or other public or private property, for a period in excess of that described in this subchapter for notice and removal of graffiti.

(c) Violation of this subchapter is an infraction.

[History: formerly § 2.603; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.040 Notice to Abate.

Whenever the city manager or his or her designee determines that graffiti exists on any permanent structure in the Town which is visible from the street or other public or private property, he or she shall cause a notice to be issued to abate such nuisance. The property owner shall have fifteen days after the date of the notice to remove the graffiti or the property will be subject to abatement by the city.

[History: formerly § 2.604; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.050 Service of Notice to Abate Graffiti.

(a) *Manner of Service.* The Code Enforcement Officer shall serve a Notice to Abate Graffiti (referred to herein as "Notice") on each person accused of violating this Code and on each person who occupies, leases, rents, or is in charge of the property where the violation occurred, by one of the methods set forth in the following paragraphs:

(1) *Personal Delivery.* A Notice may be served by personal delivery of a copy of the Notice to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery. The date upon which personal delivery is made shall be entered on or affixed to the face of the copy of the summons at the time of its delivery. However, service of a summons without such date shall be valid and effective.

(2) *Leaving with Another Person at Business or Residence.* If a copy of the Notice cannot with reasonable diligence be personally delivered to the person to be served, as specified in paragraph (a), a Notice may be served by leaving a copy of the Notice at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the Notice by first-class mail, postage prepaid to the person to be served at the place where a copy of the Notice were left. Service of a Notice in this manner is deemed complete on the 10th day after the mailing.

(3) If any owner of the affected property is not served under paragraphs (1) or (2), the Code Enforcement Officer shall also serve a Notice on that owner in the same manner as set forth in paragraph (1) or (2) above, except that if the owner of record after diligent search cannot be found, the Notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publishing

it in a newspaper of general circulation published in San Mateo County each day on which the newspaper is published for 10 days.

(b) *Personal Service on an Organization*

(1) *Service on Corporation.* A Notice may be served on a corporation by delivering a copy of the Notice by any of the methods prescribed by California Code of Civil Procedure, including but not limited to the following methods:

(A) To the person designated as agent for service of process as provided by any provision in section 202, 1502, 2105, or 2107 of the Corporations Code; or

(B) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process.

(2) *Service on unincorporated association, general or limited partnership.* A Notice may be served on an unincorporated association (including a partnership) by delivering a copy of the Notice:

(A) If the association is a general or limited partnership, to the person designated as agent for service of process in a statement filed with the Secretary of State or to a general partner or the general manager of the partnership; or

(B) If the association is not a general or limited partnership, to the person designated as agent for service of process in a statement filed with the Secretary of State or to the president or other head of the association, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the association to receive service of process.

(3) *Service on business organization, form unknown.* A Notice may be served on a business organization, form unknown, by leaving a copy of the Notice during usual office hours with the person who is apparently in charge of the office of that business organization, and by thereafter mailing a copy of the Notice by first-class mail, postage prepaid, to the person to be served at the place where a copy of the Notice was left. Service of a Notice in this manner is deemed complete on the 10th day after the mailing. Service of a Notice pursuant to this paragraph is not valid for a corporation with a registered agent for service of process listed with the Secretary of State.

(c) *Service of Other Notices and Documents.* All other notices and documents required by this subchapter to be served on a party may be served by mail to the party on whom it is to be made at the address last given by that person on a document filed with the Code Enforcement Officer. However, once a party appears in an administrative matter through an attorney, service shall be made by mail on the respondent's attorney.

(d) *Service by Mail.* To serve any document by mail, the document shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid,

addressed to the person on whom it is to be served, at the address specified in this Municipal Code. Service is complete at the time of the deposit.

(e) *Actual Notice Not Required.* The failure of any person to receive actual notice required under this paragraph shall not affect the validity of any proceedings taken under this subchapter.

(f) *Proof of service.* Proof of giving any notice may be made by the certificate of any officer or employee of the Town, or by the affidavit or declaration of any person over the age of eighteen years, which shows service in conformity with this Code or other provisions of law applicable to the subject matter concerned.

[*History:* formerly § 2.605; ORD. 482, 9/13/95; ORD. 638, 12/14/05; ORD. 722, 6/12/13]

[*References:* Gov't Code § 38773.1; 38773.1CCP §§ 415.10, 415.20, 415.30, 415.95, 416.10, 416.40]

2.02.060 Removal of Graffiti.

(a) *Property Owner's Consent to Remove.* Whenever the city manager or his or her designee determines that graffiti exists on any permanent structure in the Town which is visible from the street or other public or private property, and a notice to abate has been served as provided in Section 2.02.040, and the graffiti has not been abated within fifteen days from the date of service of that notice, the city manager or his or her designee is authorized to provide for and use public fund, if necessary, to remove graffiti upon the following conditions:

(1) **Public Property.** Whenever the city manager or his or her designee determines that a graffiti nuisance exists upon property owned by the city, it shall be removed, replaced or repaired as soon as possible. When the property is owned by a public entity other than the city, the removal of the graffiti nuisance is authorized after securing written consent of the public agency having jurisdiction over the property.

(2) **Private Property.** Where the subject property is privately owned, the removal, repair or replacement of the graffiti nuisance is authorized after the city manager, or his or her designee, secures the written consent of the owner of the property and the owner executes a release and waiver approved as to form by the city attorney.

(3) The graffiti nuisance shall be removed, replaced or repaired as authorized herein, but the removal, replacement or repair shall not involve the painting, replacement or repair of a more extensive area than is necessary to abate the nuisance.

(b) *Removal by Town Without Consent of Property Owner.* The city manager may initiate proceedings to abate graffiti maintained contrary to the provisions of this subchapter only after the following has occurred:

(1) A notice to abate has been issued and served; and

(2) The property owner has failed to either remove the graffiti or consent to its removal by the Town within the time period specified in the notice to abate; or

- (3) The property owner has indicated to Town staff in writing that it will not be removing the graffiti despite the notice; or
- (4) The property owner has requested that the City abate the graffiti; or
- (5) The Town determines that the graffiti needs to be abated sooner than the time specified in the notice to abate because of public health, safety or welfare reasons, and the property owner has consented to the removal."

[History: formerly § 2.606; ORD. 482, 9/13/95; ORD. 638, 12/14/05; ORD. 687, 1/13/10]

2.02.070 Hearing Prior to Abatement, Notice of Hearing.

(a) Prior to the city abating graffiti on private property without the consent of the owner, a hearing before the city manager or his or her designee shall be held, at which time the property owner shall be given an opportunity to be heard regarding the proposed abatement. A notice of the time and place of the hearing before the city manager or his or her designee shall be sent to the property owner not less than ten days prior to the hearing. Service shall be as set forth in Section 2.02.050, and copy therefore shall be conspicuously posted on the affected premises on the date the notice is so served. Said notice shall be posted and served at least ten days before the time fixed for such hearing; proof of such posting and service of notice shall be made by declaration under penalty of perjury filed with the hearing officer.

(b) The failure of any person to receive the notice shall not affect the validity of any proceedings under the subchapter.

[History: formerly § 2.607; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.080 Conduct of Hearing.

The hearing to determine whether a nuisance exists shall be conducted by the city manager or his or her duly authorized representative as hearing officer. At the hearing, the hearing officer shall receive and consider all relevant evidence. Interested person shall be given a reasonable opportunity to be heard in conjunction therewith. Based upon the written evidence so presented, the hearing officer shall determine whether a nuisance within the meaning of this subchapter exists.

[History: formerly § 2.608; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.090 Order of Abatement.

Within ten days after the hearing, the city manager or his or her designee shall give written notice of the decision to the owner and to any other person other person requesting the same. If a nuisance is determined to exist, the notice shall contain an order of abatement directed to the owner of the affected property or the person in control and/or charge of the property, and shall set forth the nature of the graffiti, its location on the premises and the time and manner for its abatement. The city manager may impose such conditions as are reasonably necessary to abate the graffiti. The decision of the city manager may be appealed to the city council by

filing a written request for appeal with the city manager within ten days after the city manager's notice of decision to the owner.

[*History:* formerly § 2.609; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.100 Abatement.

If the city manager's decision is not appealed and the nuisance is not abated within the time set by the order of abatement, the city manager or his or her designee is authorized to enter upon the premises and to abate the graffiti nuisance through utilization of labor, equipment and materials directed by the city manager. The graffiti shall be removed, replaced or repaired as authorized herein, but the removal shall not involve the painting or repair of a more extensive area than is necessary for such removal. The city administrator shall then prepare a statement of the fact of such abatement and of the expense incurred in abatement and shall file the statement with the city manager. Such statement shall identify the premises and state the cost of the action taken. If the premises include more than one lot, each separate lot, or all of the lots may be set forth in the same statement.

[*History:* formerly § 2.610; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.110 Assessment of Cost.

Upon completion of the work required to abate the graffiti, the cost to the city to perform such work shall be assessed against the property owner pursuant to the procedures set forth in the Uniform Housing Code adopted by the Town of Colma.

[*History:* formerly § 2.611; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.120 Furnishing Graffiti Implements to Minors Prohibited.

It is unlawful for any person, other than a responsible adult, or a school teacher for purposes of instruction, to knowingly sell, exchange, give, loan or in any way furnish to any minor a graffiti implement.

[*History:* formerly § 2.612; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.130 Possession of Graffiti Implements.

Except as may be authorized by the City, no person shall have in his or her possession any graffiti implement while at or on the premises of any public park, playground, swimming pool, recreational facility or while loitering near an underpass, bridge abutment, storm drain or other similar type of infrastructure.

[*History:* formerly § 2.613; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.140 Restriction on Storage of Graffiti Implements.

Every person who owns, conducts, operates or manages a retail commercial establishment selling graffiti implements shall store or cause such graffiti implements to be stored in an area

viewable by, but no accessible to the public in the regular course of business without employee assistance, pending legal sale of such graffiti implements.

[History: formerly § 2.614; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.150 Sign Required.

Every person who owns, conducts, operates or manages a retail commercial establishment which offers for sale or sells graffiti implements shall display at the location of retail sale of such graffiti implements a sign, in letters at least three-eighths (3/8") of an inch high, clearly visible and legible to customers which states as follows:

IT IS UNLAWFUL FOR THIS BUSINESS TO SELL OR GIVE TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN YEARS AEROSOL PAINT CONTAINER, INDELIBLE MARKER PEN, OR GLASS ETCHING TOOL.

[History: formerly § 2.615; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.160 Parental Responsibility.

Pursuant to Section 1714.1(b) of the California Civil Code, every parent or other legal guardian having custody or control of a minor who defaces property by inscribing graffiti thereon shall be jointly and severally liable with such minor for any resulting damages incurred by property owner, or any other person, in an amount not to exceed ten thousand dollars for each such act of defacement and for all attorney's fees and court costs incurred in connection with the civil prosecution for damages.

[History: formerly § 2.616; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.170 Rewards.

(a) *Amount.* Pursuant to Section 53069.5 of the California Government Code the city may pay to any person who provides information which leads to the arrest and conviction of any person who maliciously injures or destroys another's property by the use of graffiti, a reward as established from time to time by City Council resolution. The amount of any reward paid pursuant to this subchapter may be sought from the person arrested and convicted as restitution in addition to any other restitution associated with the removal of graffiti.

(b) Claims for Rewards.

(1) Contents. Claims for rewards under this subchapter shall be filed with the City. Each claim shall:

(A) Specifically identify the date, location and kind of property damaged or destroyed;

(B) Identify by name the person who was convicted or confessed to the damage or destruction of property;

(C) Identify the court and the date upon which the conviction occurred or the place and date of the confession.

(c) *Investigation and Verification.* No claim for reward shall be allowed by the City Council unless an authorized representative of the City investigates and verifies the accuracy of the claim and recommends that it be allowed.

(d) *Liability.* The person committing the graffiti, or if an unemancipated minor, the custodial parent of said minor shall be liable for reward paid pursuant to this subchapter.

(e) *Multiple Contributors.* In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate.

For the purposes of this section, diversion of the offending violator to a community service program or a plea bargain to a lesser offense shall constitute a conviction.

[*History:* formerly § 2.617; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

2.02.180 Remedies Cumulative.

The remedies provided in this subchapter are in addition to the other remedies and penalties available under this code and the laws of the State of California.

[*History:* formerly § 2.618; ORD. 482, 9/13/95; ORD. 638, 12/14/05]