

ORDINANCE NO. 225

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LAKE FOREST AMENDING AND RESTATING LAKE
FOREST MUNICIPAL CODE CHAPTER 6.14, ARTICLE II
REGARDING GRAFFITI AND AMENDING ARTICLE I
REGARDING NUISANCES**

WHEREAS, the placement of graffiti on public and private property is detrimental to the health, safety and welfare of the community in that it creates urban blight, encourages gang activity and reduces property values and business opportunities; and

WHEREAS, the City Council of the City of Lake Forest finds and determines that the placement of graffiti on public and private property is a public nuisance; and

WHEREAS, the City of Lake Forest spends a significant amount of public funds and other resources to remove graffiti; and

WHEREAS, California Government Code Section 38772 authorizes the City to provide for abatement of graffiti at the expense of the person causing it, and authorizes parents and guardians of minors to be held jointly and severally liable for graffiti caused by a minor;

WHEREAS, California Civil Code section 1714.1 also provides for parental or guardian liability for property damage caused by a minor, and provides for periodic increases in the amount of damages that may be recovered; and

WHEREAS, the City Council wishes to amend Chapter 6.14 of the Lake Forest Municipal Code to include parent or guardian liability for graffiti placed by minors, and to expand the City's options for enforcement and cost recovery relating to graffiti placement and removal; and

**THE CITY COUNCIL OF THE CITY OF LAKE FOREST DOES ORDAIN
AS FOLLOWS:**

SECTION 1. Lake Forest Municipal Code Chapter 6.14, Article II, Sections 6.14.101 through Section 6.14.106 are hereby deleted in their entirety and restated to read as follows:

**“Article II
GRAFFITI**

Sections:

Sec. 6.14.101	Graffiti defined.
Sec. 6.14.102	Prohibition.
Sec. 6.14.103	Sale and possession of pressurized paint cans.
Sec. 6.14.104	Parental and minor liability.
Sec. 6.14.105	Liability of non-minors for costs of abatement.
Sec. 6.14.106	Determination of liability.
Sec. 6.14.107	Removal of graffiti.
Sec. 6.14.108	Treble damages for second or subsequent judgment.
Sec. 6.14.109	Civil penalty.
Sec. 6.14.110	Rewards.
Sec. 6.14.111	Alternate actions.

6.14.101 – Graffiti defined.

For the purposes of this chapter, “graffiti” means the unauthorized spraying of paint or marking of ink, chalk, dye or other similar substances, or any other method of applying any of these substances on public or private buildings, structures or any other place or property within the City.

6.14.102 – Prohibition.

A. No person shall place graffiti upon any public or privately owned structure, building, or property, including natural and manmade objects within the City.

B. Declaration of Nuisance. A violation of this Chapter constitutes a public nuisance, and may be abated by any means authorized by law.

C. Violation of this Chapter constitutes a misdemeanor, punishable in accordance with Section 1.01.200 et seq. of this Code.

6.14.103 – Sale and possession of pressurized paint cans.

The following regulation shall apply to the sale and possession of pressurized paint cans in the City:

A. No person shall sell any pressurized can containing any substance commonly known as paint or dye to anyone under the age of eighteen (18) years and no person under the age of eighteen (18) years shall purchase any pressurized can containing paint or dye.

B. No person shall have in his or her possession any pressurized can containing any substance commonly known as paint or dye while in any public park, playground, swimming pool, or recreational facility in the City. This section shall not apply to authorized employees of the City; or any individual or authorized employee of any individual, agency, public utility, or company under contract with the City; or any individual, authorized employee, or contractor of another governmental entity while in the performance of official duties for said governmental entity within the City.

6.14.104 – Parental and minor liability.

Pursuant to California Civil Code Section 1714.1(b) and Government Code Section 38772, each parent or legal guardian having custody and control of a minor who places graffiti on any public or privately owned structure, building, or property, including natural and manmade objects within the City shall be jointly and severally liable with such minor for any and all costs incurred in connection with the removal of any graffiti caused by the minor, including all abatement costs, attorney's fees, court costs, removal costs, costs of repair and/or replacement, and the law enforcement costs incurred by the City in identifying and apprehending the minor. The liability of each parent or guardian shall not exceed thirty-seven thousand dollars (\$37,000), or any future amount set by the California Judicial Council in accordance with California Civil Code section 1714.1(c). Such liability shall be a personal obligation of each parent or guardian and shall constitute a lien or special assessment on property owned by each parent or guardian pursuant to Section 6.14.012 of this chapter. The City is authorized to initiate legal action to enforce this section, or to recover these costs by any other means provided by law. Disposition of a criminal prosecution relating to placement of graffiti does not preclude the City from seeking full cost recovery as provided herein.

6.14.105 – Liability of non-minors.

Pursuant to Government Code Section 38772, any person who places graffiti on any public or privately owned structure, building, or property, including natural and manmade objects within the City shall be personally liable for any and all costs incurred in connection with the removal of any graffiti caused by that person, including all abatement costs, attorney's fees, court costs, removal costs, costs of repair and/or replacement, and the law enforcement costs incurred by

the City in identifying and apprehending the person. Such liability shall be a personal obligation and shall constitute a lien or special assessment on property owned by such person pursuant to Section 6.14.012 of this chapter. The City is authorized to initiate a legal action to enforce this section, or to recover these costs by any other means provided by law. Disposition of a criminal prosecution relating to placement of graffiti does not preclude the City from seeking full cost recovery as provided herein.

6.14.106 – Determination of liability.

Liability of minor or any other person for placement of graffiti may be determined by any confession or admission, or any guilty plea, nolo contendere plea, or conviction regarding any violation of the Penal Code relating to graffiti or any other federal, state or local graffiti law relating to graffiti.

6.14.107 Removal of graffiti.

Graffiti may be removed by any of the following methods:

A. Any person who applies graffiti within the City shall have the duty to remove the same within twenty-four (24) hours after notice by the City or the owner of the property involved. The failure of any person to so remove said graffiti shall constitute an additional violation of this chapter. Where graffiti is applied by anyone under the age of eighteen (18) years, the parent, parents, or legal guardian shall be responsible for such removal or for the payment for removal.

B. The City Council authorizes the Director of Public Works or his or her designee to remove graffiti or other inscribed material from any and all structures and property owned or maintained by the City.

C. Whenever the Director of Public Works determines that graffiti is located on property within the City and is within view of the public or adjoining properties, the Director of Public Works or his or her designee is authorized to provide for the removal of the graffiti at the City's sole expense, without reimbursement from the property owner upon whose property the graffiti has been applied, after securing consent from the property owner.

D. If the City is unable to obtain the property owner's consent to remove the graffiti pursuant to subsection "C" above, the City may commence abatement and cost recovery proceedings pursuant to Sections 6.14.003 through 6.14.014 of this Code.

6.14.108 – Treble damages for second or subsequent judgment.

Upon the entry of a second or subsequent civil or criminal judgment within a two-year period finding an owner of property, minor or other person is responsible for a condition that may be abated in accordance with this chapter, the City may request the court order treble damages pursuant to Government Code Section 38773.7.

6.14.109 – Civil penalty.

Any person who places graffiti on any public or privately owned structure, building, or property, including natural and manmade objects within the City shall be liable for a civil penalty not to exceed \$1,000 for each violation. The civil penalty prescribed may be sought in addition to any other remedy. The City is authorized to seek recovery by any means authorized by law. The parent or legal guardian having custody and control of the minor offender shall be jointly and severally liable with the minor.

6.14.110 – Rewards.

The City Council may, by resolution, establish a reward for information leading to the identification, apprehension and conviction of any person who places graffiti upon any public or private property within the City. Said resolution may require that the convicted offender reimburse the City for any reward paid, and place responsibility for reimbursement upon the parent(s) or legal guardian(s) of any minor so convicted.

6.14.111 – Alternate actions.

The remedies provided in this chapter are intended to be cumulative. Nothing in this article shall be deemed to prevent the City from commencing a civil, criminal or administrative proceeding to abate a public nuisance or obtain cost recovery as provided herein, from pursuing any other means available to it under provisions of applicable ordinances or State law, or from correcting other hazards or deficiencies on real property in addition to or as alternatives to the proceedings herein set forth.”

SECTION 2. Lake Forest Municipal Code Chapter 6.14, Article I, Section 6.14.002, Subsection Z is hereby added to read as follows:

“Graffiti, as defined in Section 6.14.101 of this Code.”

SECTION 3. Compliance with California Environmental Quality Act.

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 4. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

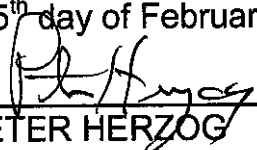
SECTION 5. Effective Date.

This Ordinance shall become effective thirty (30) days from its adoption.

SECTION 6. Publication.

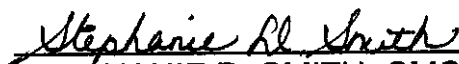
The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Lake Forest.

PASSED, APPROVED AND ADOPTED this 15th day of February 2011.



PETER HERZOG
MAYOR

ATTEST:



STEPHANIE D. SMITH, CMC
CITY CLERK

APPROVED AS TO FORM:



SCOTT C. SMITH
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF LAKE FOREST)

I, Stephanie D. Smith, CMC, City Clerk of the City of Lake Forest, do hereby certify that the foregoing Ordinance No. 225 was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 1st day of February, 2011, and thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 15th day of February, 2011, by the following vote, to wit:

AYES: COUNCIL MEMBERS: HERZOG, MCCULLOUGH, RUDOLPH,
TETTEMER, VOIGTS
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE


STEPHANIE D. SMITH, CMC
CITY CLERK