

ORDINANCE No. 2024-10

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA AMENDING
CHAPTER 9.16 OF THE VISALIA MUNICIPAL CODE RELATING TO GRAFFITI**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:

Section 1. City Council Findings. Consistent with its control over municipal affairs and the powers vested in the City of Visalia through the California Constitution, the City of Visalia is authorized to secure and promote the public health, comfort, safety, and welfare of its citizenry. The City Council of the City of Visalia hereby makes the following findings:

- A. The City of Visalia recognizes that graffiti is a common problem, that besides being an act of vandalism can be seen as a condition of blight. Blight can depreciate the value of property that has been targeted and also can depreciate the value of the adjacent properties.
- B. The City of Visalia recognizes that the cleanup and prevention of graffiti can be costly and is often viewed as a persistent problem, that if left unaddressed, can have a serious cumulative effect to a neighborhood and that it can be considered a public nuisance under the City's authority to make and enforce ordinances with respect to municipal affairs, and California Government Code section 38771, which authorizes the legislative body of a city to declare what constitutes a nuisance by ordinance.
- C. The City Council of the City of Visalia previously adopted an ordinance and established a Graffiti Abatement program to ensure that graffiti found and/or reported throughout the community was addressed in an efficient manner and removed promptly.
- D. On May 20, 2024, the City Council received a work session staff report and presentation from staff on potential revisions to Chapter 9.16 and then directed City staff to proceed with preparing revisions to Chapter 9.16 to enhance, update and revise how the City of Visalia and its residents respond to graffiti.
- E. The City Council finds that the notice requirements for the removal of graffiti found in Visalia Municipal Code section 9.16.070 should be modified since this section has not been used, that the present exception allowing for the City staff to remove graffiti at no cost to owners under an "undue hardship request" contained in section 9.16.070 should be modified with provisions for payment plans and an alternative to abatement that would consider the specific facts and circumstances of each incident, that the City may also in the alternative

proceed with declaring graffiti on private property a public nuisance and take steps to abate the nuisance.

- F. The City Council finds that the appeal process provisions in section 9.16.080 should be modified to coincide with the appeal process for other violations of the Municipal Code.
- G. City Council finds that the collection process in the restitution provision in section 9.16.090 should be modified to follow the collection process typically used by the City when municipal code violations result in penalties.
- H. City Council finds that section 9.16.120, which allows rewards to be provided for information that leads to the arrest and conviction of vandals should be removed since this program has never been utilized and staff has no plans to begin such a program.

Section 2. Revisions to Visalia Municipal Code Sections 9.16.070, 9.16.080, 9.16.090, and 9.16.120. The Visalia City Council hereby finds that based on the findings as stated above that the following revision to Municipal Code are necessary for the public health, safety, and welfare of the city. Below are revisions to Municipal Code section 9.16.070, 9.16.080, 9.16.090, (it should be noted that this section is being revised from having subsections A-M to having subsections A-C) and 9.16.120, with additional text shown *in italics* and deleted language shown in ~~strikeout~~:

9.16.070 Removal.

A. General. Any person applying graffiti within the city shall have the duty to remove same in a manner approved by the city and the property owner within twenty-four (24) hours after notice by the city or public or private owner of the property involved. Failure of any person to so remove graffiti shall constitute an additional violation of this chapter. Consistent with Civil Code Section 1714.1, where graffiti is applied by minors, the parent or guardian shall be responsible for such removal or payment of costs thereof.

B. Public Property. Whenever the ~~director of public services~~ *City Manager* or his *their designee* ~~designate representative~~ determines that graffiti exists upon property owned by the city, it shall be removed as soon as possible. When the property is owned by a public entity other than the city, the removal of the graffiti may be authorized ~~by the director of public services or his representative,~~ and *for* removal ~~undertaken~~ by city only after securing written consent of the public entity having jurisdiction over the property. The public entity shall execute a release and waiver as approved by the city's risk manager.

C. Notice of Affected Area; Requirement to Remove Graffiti.

1. Where graffiti is located upon private property and said graffiti is capable of being viewed by persons utilizing any public right-of-way or sidewalk within the city, it is the

property owner's duty to remove said graffiti promptly from the property and to restore said property at least to the condition it was in prior to such act of vandalism. If the property owner fails to promptly remove said graffiti, the city shall cause a written notice to be served upon the owner of the affected property notifying the owner of the location and description of the graffiti and of the property owner's obligation to remove said graffiti. The notice shall request the owner provide the city with contact information, including a telephone number. It shall be the responsibility of the property owner to commence removal of the graffiti described in the notice within seven (7) fifteen (15) days of service by mail or within three (3) working days of personal delivery of the notice, or within three working days of a city official notifying the property owner or property owner's agent by telephone of the issue and mailing the notice. The property owner shall diligently and promptly pursue total removal of said graffiti; provided, that an exception may exist in cases of undue hardship as established pursuant to Section 9.16.070(C)(2). Working days for purposes of this section are days which are neither Saturday, Sunday, nor a nationally observed holiday. The service is complete at the time of deposit of the notice in the U.S. mail or by personal delivery of the notice to the owner of the property subject to removal of graffiti. The failure of any person to receive such notice shall not affect the validity of any proceeding.

~~—2. Undue Hardship—Optional Procedure for Removal. In the event the property owner cannot comply with the requirement of Section 9.16.070(C)(1) due to hardship, the property owner shall file a written request for waiver of the removal requirement with the city. The property owner shall explain his/her reason(s) for making such request. The written request shall be filed within the fifteen (15) day removal period stated in Section 9.16.070(C)(1) when service of notice was by mail or three (3) working days when notice was personally served or the owner was notified by telephone and written notice was also mailed. In determining whether the request for waiver will be granted, and subsequent assistance provided to the property owner in removal of said graffiti, the city shall consider the following circumstances:~~

~~—a. The cost of restoration of the property to its original state prior to the imposition of the graffiti in proportion to the relative value of the property;~~

~~—b. The ability of the owner to pay for such removal;~~

~~—c. Whether or not the property has been the target of previous incidents of graffiti or whether a pattern of vandalism to such property exists.~~

~~—The decision of the city in the form of a written decision by the public services director, as to whether or not to grant the waiver, shall be final.~~

2. Alternative to Abatement - The City Manager or their designee may enter into an agreement with a property owner or lessee in possession, or their respective authorized agent, for the summary abatement to remove graffiti at the property owner's or lessee's expense and/or with public funds pursuant to Section 53069.3 of the Government Code. The agreement shall include the property owner or lessee in possession, or their respective authorized agent's consent for the City's entry onto the property for graffiti removal and a waiver of liability in the event of any damage caused by the City in

removing graffiti. In deciding whether to enter into this abatement alternative, the city manager, or designee, shall consider the following circumstances:

a. The cost of restoration of the property to its original state prior to the imposition of the graffiti in proportion to the relative value of the property;

b. The ability of the owner to pay for such removal;

c. Whether or not the property has been the target of previous incidents of graffiti or whether a pattern of vandalism to such property exists.

d. In deciding whether to recover abatement costs under this Section or use city funds as authorized in Governmental Code Section 53069.3, the City Manager or their designee may consider the financial and physical ability of the property owner to abate the property. For financial considerations, the person shall demonstrate by a preponderance of evidence that he or she does not have the financial ability to remove the graffiti.

The decision of the city manager shall be final.

3. City's Release From Liability. A written request to waive the requirements of Section 9.16.070 (C)(1) shall be accompanied by a release from liability form signed by the property owner, lessee in possession, or their respective authorized agent which shall release the city and its authorized agents from any and all liability that may be caused or attributed to removal of graffiti from the owner's premises by persons acting under the authorization of the city pursuant to Section 9.16.070 (C)(2).

~~4. Approval for City to Remove Graffiti. A written request to waive the requirements of Section 9.16.070(C)(1) accompanied by a signed release from liability form shall constitute an express approval by the property owner that the city or its authorized representatives may provide for the removal of the graffiti on owner's property by persons acting under the authorization of the city.~~

4. Failure to Remove Graffiti or Seek Waiver of Removal. In the event the owner fails to remove graffiti from his/her property or after he/she fails to request an alternative to abatement pursuant to Section 9.16.070 (C)(2) of such removal, or such alternative to abatement has been denied, the city may declare the property a public nuisance and the city may take any of the following courses of action:

a. Administrative Procedure to Abate Nuisance. City may direct the removal of graffiti from the property with the cost of work performed and billed to the property owner who may select the option of direct payment of such costs. Failure to make direct payment for the abatement of graffiti shall constitute a special assessment against the respective lot or parcel plat to which it relates. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. ~~Upon completion of the graffiti abatement work, the public services director shall cause to be recorded in the office of the recorder of Tulare County, a notice of completion of graffiti abatement proceedings~~

~~against a particular parcel involved. The notice of completion of graffiti abatement proceedings shall have the effect when recorded of conclusively establishing that graffiti abatement proceedings have been completed and that all necessary charges incurred on account thereof by the city are due and owing and constitute a special assessment against the subject real property. This notice shall specify the name for the current owner of the parcel as shown on the last equalized assessment rolls of the county of Tulare, and the Tulare County Assessor's Parcel Number for the parcel involved.~~

b. The city may commence criminal proceedings to abate a public nuisance under applicable Penal Code provisions.

9.16.080 Appeal of cost of removal.

~~A property owner shall have fifteen (15) ten (10) calendar days from the date of mailing by the city of the bill for the cost of removal of graffiti from the owner's property. Said appeal must be submitted in writing to the city and the appeal shall be processed and heard in the same manner as administrative appeals under Visalia Municipal Code Chapter 1.13 .city clerk. Upon receipt of the written appeal, the city clerk shall schedule a hearing before the city council. The public services director shall be so notified and shall submit a written report to the city council, with a copy to the appealing party, setting forth justifications for the description of the work done and the cost thereof. The city clerk shall notify the party appealing of the date and time of the hearing before the city council, at least ten days in advance of such hearing. At the time and place of such hearing, the public services director shall present his report and the appealing party shall present any and all information in opposition to the calculation of the cost of removal. At the conclusion of the hearing, the city council shall determine what cost, if any, is to be imposed upon the appealing party.~~

9.16.090 Responsibility.

A. Any individual who is found guilty of violating Section 9.16.070(A) shall pay restitution to the property owner, in addition to authorized penalties to the city. If the violator is a minor, the parent or guardian shall be responsible for payment of restitution. If unable to pay the city, the juvenile may be permitted to work off his/her penalty owed to the city under the direction of at least one parent and the city by abating an equivalent amount of any graffiti.

~~B. The city may, as permitted by California law, file a lien to collect abatement and related administrative costs incurred in the summary abatement of any nuisance resulting from the defacement by a minor or other person of the property of another by graffiti or any other inscribed material. The city may record this lien on real property belonging to the person who defaced the property, or if the person is a minor, on real property owned by the parent or guardian having custody and control of the minor. This lien may only be filed against the individual who is found guilty of violating Section 9.16.070(A) or if the individual is a minor the parent or guardian having custody and control of the individual.~~

~~C. Prior to recording a graffiti nuisance abatement lien, the city shall serve notice on the person who defaced the property, or if the person is a minor, the city shall serve notice~~

~~on the parent or guardian having custody and control of the minor. The notice shall be served in the same manner as a summons in a civil action. If the minor or other person cannot be found after diligent search the notice may be served by posting a copy of the notice upon the property owned by the minor or other person, in a conspicuous place, for a period of ten (10) days. The notice shall also be published pursuant to Government Code Section 6062 in a newspaper of general circulation that is published in the county in which the property is located. If the parent or guardian having custody and control of the minor, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the parent or guardian having custody and control of the minor, in a conspicuous place, for a period of ten (10) days. The notice shall also be published pursuant to Government Code Section 6062 in a newspaper of general circulation that is published in the county in which the property is located. The notice shall include an itemized description of the abatement and related administrative costs, the date of the abatement order, a description of the lien process, and the facts supporting the lien on the property.~~

~~—D.— The graffiti nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located. From the date of recording, the lien shall have the force, effect, and priority of a judgment lien.~~

~~—E.— The graffiti nuisance abatement lien shall specify the amount of the lien; that it is recorded on behalf of the city; 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 owner of the parcel.~~

~~—F.— If the lien is discharged, released or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subdivision D. shall be recorded by the city.~~

~~—G.— The graffiti nuisance abatement lien authorized by this section may be satisfied through foreclosure in an action brought by the city.~~

~~—H.— The city may recover any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien. As used in this chapter, "abatement and related administrative costs" include, but are not limited to, court costs, attorney's fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, and the law enforcement costs incurred by the city in identifying and apprehending the minor or other person. Attorney's fees may be awarded to the prevailing party in any litigation initiated under this section.~~

~~B.—I.— As permitted an alternative to obtaining a lien as described above, as Permitted by California law, the city may make the abatement and related administrative costs a special assessment against a parcel of land owned by the individual who is found guilty of violating Section 9.16.070(A) or if the individual is a minor the parent or guardian having custody and control of the individual. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection, and enforcement~~

of municipal taxes shall be applicable to the special assessment. However, if any real property to which the abatement and related administrative costs relate has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon prior to the date on which the first installment of the taxes would become delinquent, then the abatement and related administrative costs shall instead be transferred to the unsecured roll for collection. Notices or instruments related to the abatement proceeding or special assessment may be recorded.

~~J. The city may impose a special assessment by keeping an account of the cost of abating such nuisance and shall embody such account in a report. The report shall refer to each separate lot or parcel of land by description sufficient to be assessed against each such separate lot or parcel. A copy of the report shall be mailed to the property owner of record. The city shall also send in writing to the property owner of record: the date of the abatement; the street address, legal description and assessor's parcel number of the parcel on which the assessment is imposed; a description of the assessment process; when the report will be submitted to the city council for hearing and confirmation and the facts supporting the assessment. Said notice shall advise owners that they may appear at the time and place of the city council hearing and state any objections to the assessment.~~

~~—K. The city clerk shall post a copy of such report at city hall, together with the notice of filing thereof and of the time and place when and where it will be submitted to the city council for hearing and confirmation. After confirmation of the report and assessment by the city council, a copy of the report and assessment shall be sent to the city finance officer.~~

~~—L. The city finance officer may receive payments for the amount due until the city refers the matter to the county auditor for placement on the tax rolls. On or before the tenth day of August of each year, a certified copy of the report shall be filed with the Tulare County Auditor for the amounts of the respective assessments against the respective parcels of land as they appear on the roll at the same time and in the same manner as municipal taxes. They shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for property taxes. All laws and ordinances applicable to the levy collection and enforcement of city taxes are made applicable to such special assessments, and the lien of said assessment shall have priority of the taxes with which it is collected.~~

C.—M.—The procedure provided in this chapter shall be cumulative and in addition to any other procedure or procedures provided in ordinances of this city or by state law for the abatement of graffiti, including, summary abatement. This section is not intended to affect any other action, civil or criminal, for maintenance of any such condition.

9.16.120 ~~Reward Reserved.~~

~~—The city may provide rewards of up to five hundred dollars (\$500.00) for information which leads to the arrest and conviction of graffiti vandals. As part of this incentive, the~~

~~police department may establish, publicize, and maintain a “graffiti hotline” for citizens to utilize to report this nuisance.~~

Section 3. California Environmental Quality Act Requirements. This Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines because there is no possibility that this Ordinance or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs. 15061(b)(3).)

Section 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

Section 5. Effective Date. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect thirty (30) days from the date of adoption.

PASSED AND ADOPTED: October ____, 2024

BRIAN POOCHIGIAN, MAYOR

ATTEST:

LESLIE B. CAVIGLIA, CITY CLERK

APPROVED BY CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF TULARE) ss.
CITY OF VISALIA)

I, Leslie B. Caviglia, City Clerk of the City of Visalia, certify the foregoing is the full and true Ordinance 2024-10 passed and adopted by the Council of the City of Visalia at a regular meeting held on October ____, 2024 and certify a summary of this ordinance will be published in the Visalia Times Delta.

Dated: October ____, 2024

LESLIE B. CAVIGLIA, CITY CLERK

By Jennifer Gomez, Chief Deputy City Clerk