

ORDINANCE NO. 23-02

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE BELL CANYON COMMUNITY SERVICES DISTRICT AMENDING AND RESTATING REGULATIONS REGARDING GRAFFITI ENFORCEMENT AND COST RECOVERY AND FINDING OF EXEMPTION FROM CEQA

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 Board of Directors of the Bell Canyon Community Services District (“District”) finds and determines that the placement of graffiti on public and private property is a public nuisance; and

WHEREAS, California Government Code Section 61100(q) authorizes community services districts to provide for summary abatement of graffiti and that Ventura County Local Agency Formation Commission (“LAFCo”) granted that same power to the District in 2007; and

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 Board of Directors of the District desires to enact this ordinance for graffiti abatement, which Ordinance shall repeal and supersede any and all prior ordinances or resolutions related to this subject matter.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE BELL CANYON COMMUNITY SERVICES DISTRICT DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are hereby incorporated by this reference.

SECTION 2. The following regulations for the abatement of graffiti within the District’s jurisdiction is hereby enacted:

1. Intent and purpose—Findings.

- a. Section 61100(q) of the Government Code authorizes the District to provide for the removal of graffiti or other inscribed material from public or privately owned permanent structures located on public or privately owned real property located within the District. The District finds that graffiti, on public and private properties, is a blighting factor on the neighborhood, encourages other acts of malicious vandalism, causes an increase in crime and depreciates the value of the adjacent and surrounding properties.

- b. The District further finds and determines that graffiti is obnoxious, is inconsistent with the District's property maintenance goals, aesthetic standards and unless it is quickly removed from public and private properties, other properties soon become the target of graffiti. Such defacement of property is most often committed by persons under the age of eighteen years using aerosol or pressurized containers of paint, indelible markers and pens, paint sticks, and glass etching tools, and done in connection with gang and/or tagging activities.

2. Definitions

The following words, phrases and terms shall have the meanings as indicated:

“Aerosol paint container” means any aerosol container six ounces or less net weight contents, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint or other substances capable of defacing property with permanent, indelible or waterproof ink, paint or other liquid.

“Glass etching tool” means any professional etching tool or glass cutter.

“Graffiti” means:

(a) Any act which results in the altering or defacing of any real or personal property through the use of paint, spray paint, markers, paint sticks, glass etching tools, objects or other substances capable of destroying property, which acts shall include, but not be limited to, the writing, defacing, marring, inscribing, scratching, painting or affixing of other markings on buildings or structures, including, but not limited to, walls, fences, signs, retaining walls, driveways, walkways, sidewalks, curbs, curbstones, street lamp posts, hydrants, trees, electric light or power or telephone or telegraph poles, fire alarms, drinking fountains, parking meters, trash receptacles or mail boxes.

(b) Any act which results in the altering or defacing of any real or personal property through the use of paint, spray paint, markers, paint sticks, glass etching tools, objects or other substances capable of destroying property, which is offensive to a reasonably sensitive person.

“Graffiti implement” means an aerosol paint container, an indelible marker, a paint stick, a glass etching tool, or any similar device.

“Indelible marker” means any marker, pen or similar implement with a tip which, at its broadest width, is greater than one-eighth inch, containing a fluid which is not soluble in water.

“Paint stick” means a device containing a solid form of paint, chalk, wax, epoxy, or other similar substance which is not water soluble, capable of being applied to a surface by pressure, and upon application, leaving a mark at least one-eighth of an inch in width, visible from a distance of twenty feet.

“Responsible adult” means a parent or legal guardian of an individual under the age of eighteen years. A responsible adult may also include an agent of the parent or legal guardian provided said agent is over eighteen years of age.

3. Prohibition of graffiti.

- a. It is unlawful for any person to apply graffiti upon any wall, rock, street, bridge, building, fence, gate, structure, tree or other real or personal property, whether owned publicly or privately, without the permission of the owner, lessee or operator of such property.
- b. It is unlawful for any person who owns or is otherwise in control of any real property within the District to permit or allow 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.
- c. Any individual who is found guilty of violating any provisions of this chapter shall pay restitution to the property owner, in addition to authorized penalties. If the violator is a minor, the parent or guardian shall be responsible for payment of restitution.

4. Possession by minors.

It is unlawful for any person under the age of eighteen years who is not accompanied by a responsible adult to have in his or her possession any graffiti implement:

(a) Upon a public property, unless the person is attending or traveling to or from a school at which the person is enrolled, and the person is participating in a class at said school which has, as a written requirement of the class, the need to use such a graffiti implement;

(b) Upon private property without the consent of the owner, tenant or operator of such private property.

5. Removal.

- a. Any person applying graffiti within the District shall have the duty to remove same in a manner approved by the District within twenty-four (24) hours after notice by the District or the public or private owner of the property involved. The notice to the person applying graffiti shall be in writing and shall be addressed and served in the manner provided below. 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 for the cost thereof and for all attorney's fees and court costs incurred in connection with the civil prosecution of any claim for damages.
- b. Whenever the General Manager or his or her designated representative determines that graffiti exists upon property owned by the District, it shall be removed as soon as possible. When property is owned by a public entity other than the District, the removal of the graffiti may be authorized by the General Manager or his or her representative and removal undertaken by District personnel or

independent contractor only after securing written consent of the public entity having jurisdiction over the property.

- c. Whenever the District becomes aware, or is notified and determines that graffiti is so located on public or privately owned property viewable from a public or quasi-public place within the District, the District shall be authorized to use public funds for the removal of same, or for the painting or repairing of same, but shall not authorize or undertake to provide for the painting or repair of any more extensive area than that where the graffiti is located, unless the General Manager, or his or her designee, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

6. Non-liability for consensual removal.

- a. Prior to entering upon private property or property owned by a public entity other than the District for the purpose of removal of graffiti, the District shall attempt to secure the consent of the property owner and a release of the District from liability for private or public property or liability damage.
- b. If a responsible party fails to remove the offending graffiti within the time herein specified, or if the District shall have requested consent to remove or paint over the offending graffiti and the responsible party shall have refused consent for entry on terms acceptable to the District consistent with the terms of this section, the District shall commence abatement and cost recovery proceedings for other removal of the graffiti.

7. Nuisance.

It is declared that graffiti is obnoxious and a nuisance. It is further declared that any surface of a structure on a parcel of land which has been defaced with graffiti after removal more than five (5) times in twelve (12) months shall constitute a graffiti-attracting surface and is a nuisance.

8. Reporting graffiti; reward.

- a. The District may pay to any person who provides information which leads to the arrest and conviction of any person who applies any drawing, inscription, figure or mark, commonly known as graffiti, to a surface of real or personal property, a reward as established from time to time by resolution. The amount of any reward paid pursuant to this section 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 under this section shall be filed with the General Manager. Each claim shall: (i) specifically identify the date, location and kind of property damaged or destroyed; (ii) identify by name the person who was convicted or confessed to the damage or destruction of District property; and (iii) identify the

court and the date upon which the conviction occurred or the place and the date of the confession.

- c. No claim for reward shall be allowed by the District unless an authorized representative of the District investigates and verifies the accuracy of the claim and recommends that it be allowed.
- d. 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 section.
- e. In the event of multiple contributors of information, the reward amount shall be divided by the District in the manner it shall deem appropriate.
- f. 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.

9. Penalties.

- a. Any person found in violation of any provision of this regulation may be issued an administrative citation by any employee of the District, with a fine of up to \$100 (1st citation), \$200 (2nd citation), and \$500 (each subsequent citation in a 12-month period). A responsible person to whom a citation is issued shall be liable for and shall pay to the District the fine or fines described in the citation when due pursuant to the provisions of this regulation.
- b. Violation of any section of this regulation may be punished as a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed six months, or by both such fine and imprisonment.
- c. For continuing violations, each day a violation of a policy exists shall be a separate violation and be subject to a separate fine. A citation may charge a violation for one (1) or more days on which a violation exists, and for violation of one (1) or more policy sections.
- d. The District may take into consideration the fact that a person has been issued citations when the District is determining whether to grant, modify, suspend, revoke, or deny any permit, license, agreement or any type of discretionary use approval for that person, and such citations are evidence that the person has committed actions that are not compatible with the health, safety and general welfare of other persons and businesses in the vicinity.
- e. Pursuant to Government Code Section 38772(a), any person who places graffiti on any public or privately owned structure, wall, fence or other work of improvement, including natural and manmade objects, located on publicly or privately owned real property within the District, 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, attorneys' fees and court costs to the

prevailing party, removal costs, costs of repair and/or replacement, and the law enforcement costs incurred by the District in identifying and apprehending the person. The District is authorized to initiate a legal action to enforce this section, or to recover these costs by any other means provided by law. Recovery of attorneys' fees and court costs by the prevailing party shall be limited to those individual actions or proceedings in which the District elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees, and in no case shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the District in the action or proceeding. Disposition of a criminal prosecution relating to placement of graffiti does not preclude the District from seeking full cost recovery as provided herein.

10. Abatement procedures.

- a. The General Manager may institute procedures for abatement of property upon which graffiti exists. Pursuant to California Government Code Sections 38773.1 and 38773.2, the District may elect that the costs of the abatement, as confirmed by the Board of Directors, shall constitute a lien against: 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.
- b. Prior to the recordation of the lien, the District 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 personally served upon the minor or other person who perpetrated the graffiti nuisance, or the minor's parents or legal guardian. If personal service cannot be made after diligent search, the notice may be posted in a conspicuous place on the property where abatement occurred, or any other means of service authorized by California Government Code Section 38773.2(b).
- c. Such notice shall describe the parcel of property which is to be subject to the lien, state the amount which the person, parent or guardian is required to pay pursuant to this chapter and indicate that unless payment is received by the District within ten days of the notice, the lien shall be recorded against the described real property.
- d. If the total costs of the abatement are not paid to the District in full within ten days after the date of service of the notice, the General Manager or 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.
- e. The lien shall specify: the amount of the lien; the District 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.

- f. If the lien is discharged, released or satisfied, either through payment or foreclosure, the General Manager or his or her designee shall record notice of the discharge containing the information specified in 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.
- g. An administrative fee as established from time to time by resolution of the District shall be added as part of any abatement proceedings.

11. Notice.

Any notice to private property owners to be served by the District under this chapter shall be addressed to the name and address as it appears on the last tax assessment roll by depositing a copy of the notice in the United States mail, certified, with postage fully affixed, or by personally delivering a copy of the notice to the owner of the property. The service shall be complete at the time of deposit in the mail or when personal service is effectuated. The failure of any person to receive such notice shall not affect the validity of any legal proceedings regarding removal of the graffiti.

12. Severability.

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application and to this end the provisions of this chapter are declared to be severable.

SECTION 3. The Board of Directors finds and determines that pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA), this Ordinance is an organizational or administrative activity of the District that will not result in direct or indirect physical changes in the environment, and therefore not a project. Accordingly, no further environmental review is necessary. Furthermore, given that the Ordinance is not related to a specific project, the Ordinance (i) will not impact a sensitive environmental resource of hazardous or critical concern; (ii) will not have a cumulative impact on the environment through successive projects of the same type, in the same place, over time; (iii) does not have any unusual circumstances that will have a significant effect on the environment; (iv) does not impact a scenic highway; (v) is not located on a hazardous waste site; and (vi) will not adversely impact a historical resource. Accordingly, none of the exceptions to categorical exemptions set forth in the CEQA Guidelines, Section 15300.2, apply to this Ordinance, and the regulations on graffiti abatement is exempt from CEQA pursuant to Public Resources Code Section 21080.17.

SECTION 4. This Ordinance shall repeal and supersede all prior ordinances relating to graffiti abatement.

SECTION 5. This Ordinance shall become effective 30 days following its adoption.

PASSED AND ADOPTED this 27th day of February, 2023.

