



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jon Cicirelli  
Rosalynn Hughey

**SUBJECT: COUNCIL PRIORITY #25: PRIVATE  
PROPERTY GRAFFITI ABATEMENT  
ORDINANCE**

**DATE:** January 21, 2020

Approved

*D. D. S. L.*

Date

*1/22/2020*

## RECOMMENDATION

- (a) Direct staff to implement changes to the graffiti abatement process, whereby Parks, Recreation and Neighborhood Services Department staff would reinspect sites where there is a second complaint, and forward the complaint to the Code Enforcement Division, thereby shortening the abatement process; and
- (b) Determine that the Council Policy Priority #25 is completed and will be removed from the Council Policy Priority list at the next priority-setting session in 2020.

## OUTCOME

The responsiveness of the graffiti abatement process will be improved.

## BACKGROUND

The City's Anti-Graffiti Program is administered by the Department of Parks, Recreation and Neighborhood Services (PRNS). The purpose of the program is to beautify San José by preventing and removing graffiti through community involvement, eradication, and enforcement. The program is comprised of 6.5 FTE. Program staff manage the City's contractor, Graffiti Protective Coatings (GPC), who has conducted graffiti removal on the City's behalf since 2011.

Residents can report graffiti through the MySanJose app, by phone through the 24-hour hotline, or via email. Graffiti reported by residents may be located on City property, the property of other government agencies or utilities, or private property. For graffiti on City property, the City's contractor, GPC, targets removing the graffiti within 72 hours of receiving a complaint. For graffiti on the property of other government agencies or utilities, program staff hand off complaints to the relevant agency. Staff regularly refer complaints to PG&E, Caltrans, Caltrain, VTA, Union Pacific Railroad, billboard companies and the County of Santa Clara. For graffiti on private property, program staff conduct a site visit to inform the property owner about the need to

January 21, 2020

**Subject: Council Priority #25: Private Property Graffiti Abatement Ordinance**

Page 2

remove the graffiti and to offer City assistance, such as a courtesy abatement conducted by the City or providing free paint. If staff is not able to make contact with the property owner a compliance letter will be mailed, requiring the graffiti to be abated within 10 days.

For the City to conduct a courtesy abatement on private property, the current process requires a signed permission form from the property owner authorizing the City to remove the graffiti. The City also can abate on private property by obtaining a warrant to conduct the abatement, but this is a lengthy process which requires a court appearance and is rarely used in graffiti cases. Over the past several years, both the City Auditor and the City Council have proposed developing an ordinance that would authorize the City to abate graffiti on private property without obtaining a signed consent form or a warrant.

In June 2013, the City Auditor published an audit report entitled "Graffiti Abatement: Implementing a Coordinated Approach."<sup>1</sup> Recommendation #6(b) from this audit recommended an implied consent process, as follows:

"To better involve property owners and parties responsible for non-City properties, we recommend PRNS develop... a permission gathering process or proposal to amend the Municipal Code to allow for implied consent to remove graffiti on non-City owned property."

At the February 14, 2017 Council Meeting, Mayor Liccardo and Councilmembers Carrasco, Khamis, Nguyen and Peralez issued a memorandum under the 2015-2016 Annual Report on the Anti-Graffiti and Anti-Litter Programs that recommended a similar proposal. They proposed that, as part of the Council priority setting process, the Council consider directing development of an ordinance that would allow the City to abate graffiti on private property after providing a warning to the property owner. The Council forwarded this proposal to the March 7, 2017 priority setting process. It was considered as part of that process but not selected as a Council priority.

At the October 4, 2017 Rules Committee meeting, Councilmember Khamis brought forward a memorandum that resubmitted the same policy priority proposal for consideration as part of the October 17, 2017 priority setting process. The proposal consisted of the following staff direction:

"Private Property Graffiti Abatement Ordinance: Include a proposed ordinance change on the upcoming Council priority setting session that will allow staff to warn private property owners to abate graffiti on their property within 72 hours, or the City will abate the graffiti and bill the property owner."

The memorandum's analysis section offered South Lake Tahoe as a potential model for staff to consider, noting that South Lake Tahoe had "revised their municipal code such that notice is provided, and if no response is offered in 10 days, the City abates the graffiti and fines the property owner the cost of abatement, plus a 25% administrative fee." At its October 17, 2017 meeting, the City Council placed Councilmember Khamis' proposal on the priority list as Priority

---

<sup>1</sup> <https://www.sanjoseca.gov/Home/ShowDocument?id=33790>

#17: Private Property Graffiti Abatement Ordinance. At the March 5, 2019 City Council priority setting session, the Council maintained this priority on the list as Priority #25.

## **ANALYSIS**

### **Summary Abatement of Graffiti on Private Property**

Summary abatement of graffiti is a process under which a jurisdiction abates graffiti on private property without consent of the property owner and without going to court to obtain a warrant. As noted in Councilmember Khamis' policy priority proposal, South Lake Tahoe's municipal code establishes a process that allows summary abatement of graffiti. After receiving a complaint about graffiti on private property, South Lake Tahoe contacts the property owner and gives them an opportunity to sign a consent form that allows the City to remove the graffiti. If the property does not sign this form, the City sends the property owner a notice informing them that they have seven days to remove the graffiti at their own expense or be subject to fines or summary abatement of the graffiti by the City. The summary abatement process is described in section 4.55.050 of the South Lake Tahoe municipal code, as follows:

“The police department shall notify the city attorney's office in the event graffiti is not removed by the property owner within the mandatory seven-day period, and a summary abatement process will be carried out, with a hearing in front of an administrative hearing officer. The property owner shall be given an opportunity to explain why the graffiti remains. If no reasonable explanation and/or timeframe for its removal are provided by the property owner, the city attorney's office shall coordinate with the police department to arrange to have the graffiti removed, and assess the property owner all costs of the removal, as well as any fines imposed as a result of the owner's failure to remove the graffiti on his own. Such assessment shall be in the form of a lien placed against the property.”

San José City staff have contacted staff in the South Lake Tahoe Police Department who administer their city's graffiti abatement program. South Lake Tahoe staff indicate that the summary abatement process described above is rarely if ever used. When last contacted in December 2019, the South Lake Tahoe staff indicated that they had not carried out a summary abatement during the 2019 calendar year. If a property owner fails to abate graffiti within the seven-day period, instead of pursuing summary abatement, their usual practice is to send the property owner a citation that requires them to pay a fine. The South Lake Tahoe staff experience is that a fine is sufficient to motivate compliance.

San José's Anti-Graffiti Program staff carry out summary abatements on private property under the program's current procedures, but only in cases where there is an imminent threat to public health and safety. For example, the City has encountered instances where graffiti on private property has made a threat of violence against a specific individual. In such instances San José staff can conduct a summary abatement, entering the property without consent or a warrant to remove the graffiti as quickly as possible.

In consultation with the City Attorney's Office, staff does not recommend expanding the use of summary abatements beyond instances where there is an imminent threat to public health and safety, due to legal concerns. Concerns include that the City may commit trespassing on private property or may impair rights under the Fourth Amendment to the United States Constitution.

As previously noted, as part of the 2013 audit of the Anti-Graffiti Program, the City Auditor recommended that staff develop an implied consent process that allowed the City to remove graffiti from private property without obtaining explicit consent from the property owner. After review of that recommendation with PRNS staff and staff in the City Attorney's Office, the City Auditor closed that recommendation without it being implemented due to the same legal concerns as described in the previous paragraph.

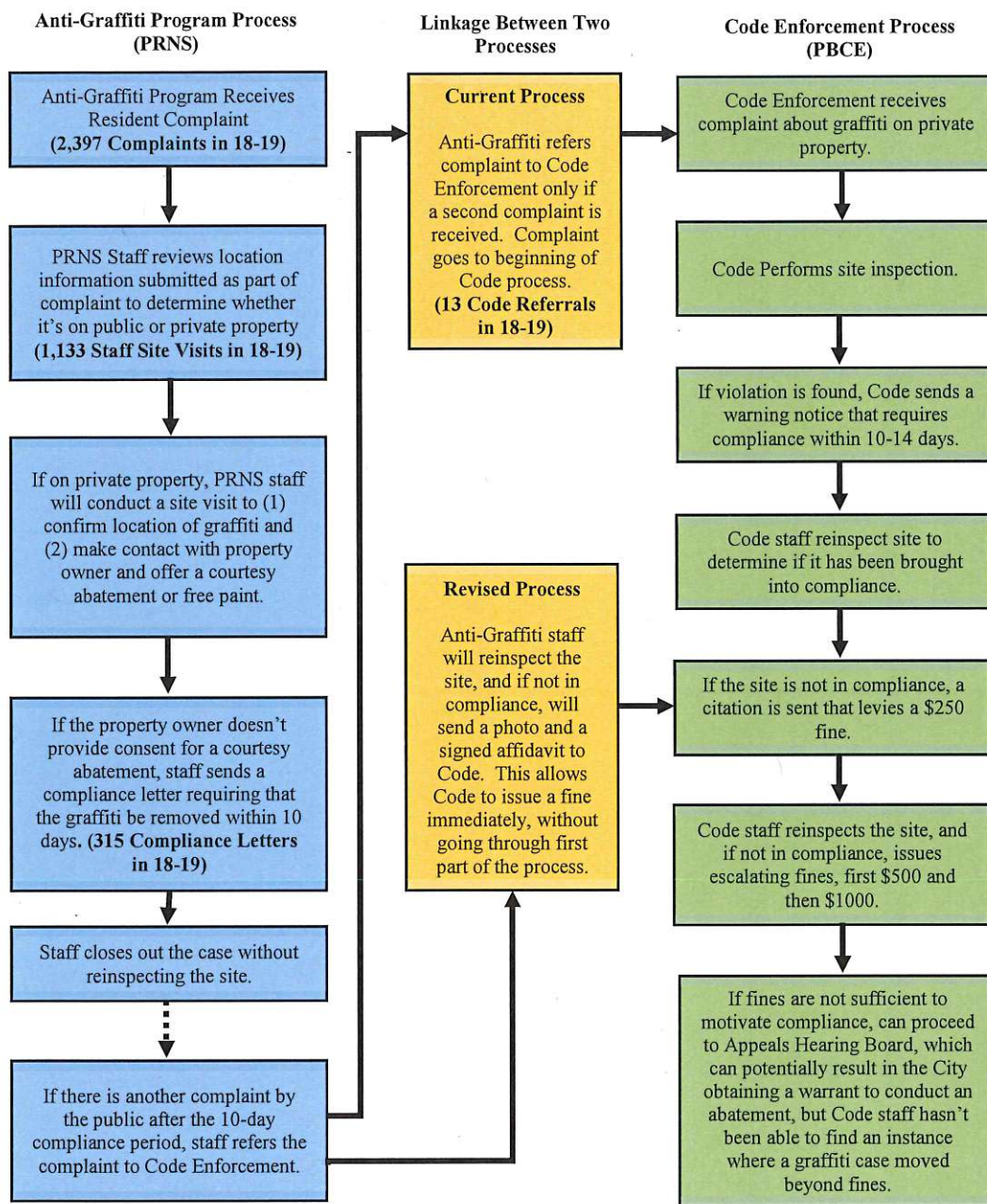
### **Potential Process Improvements**

With the understanding that the goal of this policy priority is to remove graffiti from private property quickly and efficiently, staff has assessed the current City process to determine whether there are any potential improvements that could be made, other than the use of summary abatements or implied consent. The current City process is comprised of two separate but linked processes, one administered by the Anti-Graffiti Program in PRNS and one administered by Code Enforcement in the Department of Planning, Building and Code Enforcement (PBCE). A brief description of these two processes is provided in the following paragraphs and in the process chart shown in Figure 1.

When a resident contacts the City to report graffiti through the MySanJose app, anti-graffiti hotline, or anti-graffiti email address, their complaint is sent to staff in the Anti-Graffiti Program. If the complaint appears to be about graffiti on private property, a City staff member will visit the site to confirm the location of the graffiti, take a picture of the graffiti, and attempt to make contact with the property owner. If they can talk to the property owner, they offer to perform a free courtesy abatement or to provide free paint, which the property owner can use to remove the graffiti themselves. The property owner must sign a consent form authorizing the City to perform the courtesy abatement. If they provide this authorization, the staff member will either complete the work immediately or assign it to the City's contractor, GPC. If the property owner does not provide the authorization, or if staff do not make contact with the property owner while at the site, staff will send a compliance letter to the property owner informing them that they have ten days to remove the graffiti. In the 2018-2019 Fiscal year, PRNS received 2,397 total complaints about graffiti on private property, conducted 1,133 site visits, and sent 315 compliance letters. Due to graffiti often returning to the same business locations, staff can access property owner contact information from the programs database to address graffiti and eliminate the need for a site visit.

After the compliance letter is sent, staff closes out the complaint. Staff will not take any further action unless they receive a second complaint from the public about the same graffiti after the ten-day compliance timeline has expired. If that happens, they will refer the complaint to Code Enforcement. PRNS staff referred 13 complaints to Code Enforcement in 2018-2019.

Figure 1: Graffiti On Private Property Process Map



While Anti-Graffiti staff are primarily focused on outreaching to property owners and offering them assistance, Code Enforcement is focused on enforcement. Code Enforcement can receive referrals from Anti-Graffiti program staff but can also receive complaints about graffiti on private property from members of the public who contact Code Enforcement directly. When Code Enforcement receives a complaint from either source, they send an inspector to the site to assess the complaint. If the inspector finds a violation, a warning letter is issued to the property owner indicating that the graffiti must be removed within a set timeframe, usually ten to fourteen days.

The Code Inspector will reinspect the site at the end of this period, and if the graffiti has not been removed, a citation will be issued to the property owner with an associated fine of \$250. The inspector will continue to reinspect and issue escalating fines (in the amount of \$500 and \$1000) until the graffiti is removed.

Table 1 shows graffiti on private property complaint data for the past three years for the Anti-Graffiti Program. As the table demonstrates, most complaints are resolved through outreach and site visits. A smaller number require compliance letters to be sent, and an even smaller number receive a second complaint from the public, which results in the case being referred to Code.

**Table 1: Graffiti on Private Property Complaint Data**

Fiscal Year	Private Property Complaints Received	Staff Site Visits	Compliance Letters Sent	Complaints Referred to Code Enforcement
2016-2017	1,715	1,658	602	35
2017-2018	1,985	1,551	509	54
2018-2019	2,397	1,133	315	13

Staff is recommending changes to make the process outlined in Figure 1 more efficient. Currently, when PRNS staff refer a case to Code Enforcement, Code staff performs a site inspection and issues a second compliance letter, in addition to the letter already issued by PRNS. This duplication of effort lengthens the compliance process. To enforce more rapidly against property owners who do not respond to outreach or the initial PRNS compliance letter, staff proposes streamlining the process by having PRNS staff reinspect sites that receive a second complaint from the public. By having PRNS staff reinspect when a second complaint is received and send a photo and an affidavit to Code Enforcement, Code Enforcement staff can directly issue a citation, streamlines the process. This proposal is shown as “Revised Process” in Figure 1.

By issuing more timely fines against noncompliant property owners, staff hopes to reduce the amount of time graffiti remains on buildings and to provide an incentive for property owners to remove graffiti rapidly. Given that a relatively low number of cases are currently referred to Code Enforcement (noted in the last column in Table 1) PRNS can implement this process change without additional staff.

**Other Policy Options**

Staff reviewed other policy options, in addition to the staff recommendation, that could be implemented or explored at the Council’s direction. These include:

1. Under the staff recommendation, PRNS staff would reinspect sites where a second complaint from the public is received (an average of 34 sites per year) but would not reinspect all sites where a compliance letter is sent (an average of 475 letters). Performing re-inspections of all sites where a compliance letter is sent would relieve the public of the

need to file a second complaint before a case is referred to Code Enforcement for a fine but would require more staff resources. Staff anticipates that performing these additional reinspection would require one additional Community Activity Worker in the Anti-Graffiti Program. Staff believes that the staff recommendation—reinspecting cases where a second complaint is received—is a more efficient option, as it allows staff to focus efforts where community concern is greatest without the need for additional resources.

2. In addition to the proposal contained in his priority setting nomination, Councilmember Khamis also suggested that staff could collect authorization to abate graffiti on private property through the business tax registration process. To obtain permission to abate graffiti on private property, the City must receive a signed authorization form from the property owner. Although modifications to the business tax registration process could be explored, it is not recommended as the registration process is completed once, when a business commences operation in the City of San José and would not capture the existing business base that are currently registered with the City. Moreover, this alternative would exclude residential and other non-business property from the process as they may not be required to register for business tax. Additionally, this type of change would likely result in a change order to modify the online registration form and result in a less desirable customer experience when completing the application.

## **CONCLUSION**

With the approval of direction to staff on this issue, staff would consider Council Priority #25 to be complete.

## **EVALUATION AND FOLLOW-UP**

Staff will report out on implementation of direction provided by the Council on this priority through the BeautifySJ Initiative Annual Report.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City Council website for the February 4, 2020: City Council meeting.

HONORABLE MAYOR AND CITY COUNCIL

January 21, 2020

**Subject: Council Priority #25: Private Property Graffiti Abatement Ordinance**

Page 8

**COORDINATION**

This memorandum was coordinated with the City Manager's Office and the City Attorney's Office.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Not a Project, File No. PP17-007, preliminary direction to staff and eventual action requires approval from decision-making body.

/s/

Jon Cicirelli  
Director, Parks, Recreation and  
Neighborhoods Services

/s/

Rosalynn Hughey  
Director, Planning, Building and  
Code Enforcement

For questions, please contact Neil Rufino, PRNS Deputy Director, at (408) 535-3576; or Rachel Roberts, PBCE Deputy Director, at (408) 535-7719.