DRAFT ORDINANCE

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
ATASCADERO ADDING CHAPTER 14 OF TITLE 5 TO THE
ATASCADERO MUNICIPAL CODE RELATING TO GRAFFITI

Section 1. Purpose and Intent.

(A) The Council finds and declares that:

(1) Graffiti is detrimental to the health, safety, and welfare of the community in that it leads to urban blight; encourages gang activity; is detrimental to property values, business opportunities, and the enjoyment of life; is inconsistent with the City’s property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property.

(2) Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

(B) It is the purpose of this ordinance to provide:

(1) A program to restrict the possession of graffiti implements; and

(2) To encourage the prompt removal of graffiti from walls, pavement, structures, and other improvements on both public and private property.

Section 2. Chapter 14 of Title 5 of the Atascadero Municipal Code is added to read as follows:

Chapter 14

GRAFFITI ABATEMENT

Sections:

5-14.101 Purpose
5-14.102 Definitions.
5-14.103 Nuisance.
5-14.104 Prohibition of Graffiti.
5-14.105 Possession of Graffiti Implements.
5-14.106 Duty to Remove Graffiti.
5-14.101 Purpose.

The City Council of Atascadero is enacting this Ordinance to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The council is authorized to enact this ordinance pursuant to its police powers, as specified in Article 11, Section 7 of the California Constitution.

The Council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the City acts to remove graffiti from public and private property, the graffiti tends to remain. Other property then becomes the target of graffiti, and entire neighborhoods or districts are affected and become less desirable places in which to be, all to the detriment of the City.

The City Council intends, through the adoption of this Ordinance to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The Council does not intend for this Ordinance to conflict with any existing anti-graffiti state laws.

5-14.102 Definitions.

(A) **Abate** means to remove the graffiti by such means in such manner and to such an extent as the City Manager, or his/her designee, reasonably determines is necessary to remove the graffiti from public view.

(B) **Adult** means any person eighteen (18) years of age or older.

(C) **Aerosol Containers** means any aerosol based container which is capable of spraying paint, ink, dye, or similar substance and leaving a visible mark on any natural or manmade surface.

(D) **Etching Materials** means any etching tool, chemical, paste, or similar material which is capable of being used to etch glass.

(E) **Felt-tip Markers** means any indelible marker or similar device with a tip containing ink, dye, or similar substance which, when used or applied to a surface, is capable of resulting in a mark at least 3/8" of an inch wide at its widest point.
Graffiti means any unauthorized inscription, word, figure, mark, adhesive label, patch, or design that is written, marked, etched, scratched, drawn, painted or engraved on or otherwise affixed to any surface of public or private property, which is visible from a public right of way or any neighboring property, by any graffiti implement, to the extent that the graffiti was not authorize in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.

Graffiti Implement means any felt tip marker, etching material, or aerosol container which contains paint, ink, dye, or any similar substance and which is capable of resulting in the placement of graffiti upon any surface or substance, including but not limited to glass, metal, concrete, wood, and plastic.

Minor means any person under the age of eighteen (18) years.

Owner means the owner of record of the property as set forth in the records of the Tax Assessor.

Premises Open to the Public means all public spaces, including but not limited to streets, alleys, sidewalks, parks, and public open space, as well as private property on or to which the public is regularly invited or permitted to enter for any purpose.

Property means any real or personal property and that which is affixed incident or appurtenant to real property, including but not limited to any premise, house, building, tree, rock, fence, structure or separate part thereof, whether permanent or not.

Responsible Party means an owner, or an entity or person acting as an agent for owner by agreement, who has authority over the property or is responsible for the property’s maintenance or management, irrespective of any arrangement to the contrary with any other party, each owner shall always, be a responsible party for the purposes of this chapter. There may be more than one responsible party for a particular property.

5-14.103 Nuisance.

Graffiti on public or private property, either real or personal, constitutes a public nuisance.

5-14.104 Prohibition of Graffiti.

It is hereby declared a nuisance and to be unlawful for any person to place or put, by any means, any drawing, inscription, figure, symbol, or mark or any type commonly known as graffiti to any private or public property without the permission of the owner for the premises on which the surface is located, or upon any natural surfaces such as rocks and trees, or any other surface whatsoever. It shall be unlawful for any person to solicit or command another person to apply graffiti. It shall be unlawful for any person to aid or abet or agree to aid or abet another person to plan to apply or apply graffiti.

5-14.105 Possession of Graffiti Implements
(A) **By Minors at or Near School Facilities.** It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provisions of this Section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers. The burden of proof in any prosecution for violation of this Section shall be upon the minor student to establish the need to possess a broad-tipped marker.

(B) **In Designated Public Places.** It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, school facilities, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the City or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the City. The provisions of this Section shall not apply to the possession of graffiti implements by an adult who requires possession of graffiti implements for his residence or work. The burden of proof in any prosecution for violation of this Section shall be upon the adult to establish the need to possess the graffiti implement.

### 5-14.106 Duty to Remove Graffiti.

It is unlawful for any owner of real property located in the City of Atascadero, and for any tenant, occupant, or user of any property therein, to maintain, permit, or allow graffiti to exist thereon, for longer than 48 hours.

### 5-14.107 Graffiti Removal Required

Any person found to be in violation of Section 5-14.104 shall be required to remove or cause to be removed the graffiti from the surface on which it was placed. Inasmuch as it is often not possible to determine the identity of the person who applied the graffiti, it shall be the duty of the Responsible Party of the Premises on which the graffiti has been applied to promptly remove the graffiti after notice as hereinafter set forth. If, after notice as hereinafter provided, the graffiti nuisance is not abated, the City shall proceed to abate the graffiti nuisance and the costs of same shall be assessable against the property.

### 5-14.108 Notice

Whenever the City Manager or his/her designee determines that graffiti has existed for over 48 hours on any public or private property in the City which is visible from a public right of way or any neighboring property, the City Manager or his/her designee shall cause a notice to abate the nuisance to be issued to the Responsible Party on which the graffiti was placed.
5-14.109 Service of Notice

The notice to abate graffiti shall be served upon the Responsible Party of the affected property, as such owner’s name and address appears on the last equalized property tax assessment rolls of the County. A courtesy copy of the notice shall also be served on tenants using the premises. If there is no known address for the owner, the notice shall be sent in care of the property address. The notice required by this Chapter may be served in any one of the following manners:

(A) By personal service on the Responsible Party;

(B) By registered or certified mail addressed to the owner at the last known address of said owner. If this address is unknown, the notice will be sent to the property address. In addition, whenever the property is occupied, a courtesy copy of the notice shall be delivered to the occupant.

5-14.110 Removal of Graffiti

The Responsible Party to whom a notice has been sent or delivered pursuant to Section 5-14.109 of this Chapter shall remove the graffiti within forty-eight (48) hours from the date of the notice. If the Responsible Party has a graffiti removal program that has been filed with the City for the removal of graffiti and the Responsible Party has scheduled the removal of the graffiti as part of that program, the Responsible Party shall have fifteen (15) days after service of notice as provided in Section 5-14.109 to remove the graffiti in accordance with this Chapter.

5-14.111 Parental responsibility.

Pursuant to Civil Code Section 1714.1(b), where graffiti is applied by a minor, the parents or legal guardian of the minor shall be jointly and severally liable for the payment of civil damages resulting from the minor’s misconduct in an amount not to exceed Twenty-Five Thousand Dollars ($25,000) for each offense.

5-14.112 Penalty for violation.

(A) It is unlawful for any person, firm, partnership, or corporation to violate any provision or fail to comply with any of the requirements of this Chapter. Each act prohibited and declared unlawful of this Chapter shall constitute a misdemeanor. In the alternative, and at the sole discretion of the City, each violation of any provision or the failure to comply with any of the requirements of this Title may be enforced as a violation in accordance with Title 12 of the City Municipal Code.

(B) Additional penalties available: Whenever deemed appropriate, it is the City’s intent to petition a sentencing court to impose the following additional penalties upon conviction:

(1) Performance of a minimum of 48 hours of community service not to exceed 200 hours over a period up to 180 days. Community service includes graffiti removal service.
(2) That the defendant personally clean up, repair, or replace the damaged property. Or that the defendant, and his parents or guardians if the defendant is a minor, keep the damaged property or other specified property in the City free of graffiti for up to one year. This clean-up, repair, or replacement shall be at the defendant’s expense or at the expense of his/her parents if the defendant is a minor.

(3) For each conviction of a person aged 13 to 21 for violating section 5-14.104 of this ordinance, the City may petition the court to suspend existing driving privileges or delay the issuance of driving privileges in accordance with California Vehicle Code section 13202.6.

5-14.113 Standards for graffiti removal.

Graffiti shall be removed or completely covered in a manner that renders it inconspicuous. When graffiti is painted out, the color used to paint it out shall match the original color of the surface, or the surface shall be completely repainted with a new color that is aesthetically compatible with existing colors and architecture. The removal shall not leave shadows and shall not follow the pattern of the graffiti such that letters or similar shapes remain apparent on the surface after graffiti markings have been removed. If the area is heavily covered with graffiti, the entire surface shall be repainted.

5-14.114 Community education.

The City Manager, or his/her designee, may conduct regular programs to provide community education regarding the prevention of graffiti in coordination with local businesses.

5-14.115 Provisions not exclusive.

This chapter is not the exclusive regulation of graffiti as a nuisance within the City. It supplements and is in addition to any other applicable law.

Section 3. Environmental Determination. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of this chapter is for any reason held to be invalid and/or unconstitutional by a final decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

Section 5. Effective date. This ordinance shall take effect on the 31st day following its adoption.
INTRODUCED at a regular meeting of the City Council held on _____________, and PASSED and ADOPTED by the City Council of the City of Atascadero, State of California, on _____________, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:                  CITY OF ATASCADERO

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Marcia McClure Torgerson, C.M.C., Dr. George Luna, Mayor
City Clerk

APPROVED AS TO FORM:

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Patrick L. Enright, City Attorney