



Ordinance

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

ORDINANCE NO. 220

An Ordinance of the Mayor and Council of the City of San Luis, Arizona Providing for a Program for the Abatement of Graffiti; Prohibiting the Possession and Use of Graffiti Implements; Limiting Access to Graffiti Implements; Regulating the Storage and Display of Graffiti Implements; Prohibiting Graffiti and Providing for its Removal; Providing for Penalties; Repealing Any Conflicting Provisions; Providing for Severability; and Declaring an Emergency

Whereas, the increase of graffiti, on both public and private property, is creating a condition within the city which results in blight and deterioration of property values and of the comfortable enjoyment of life and property for adjacent and surrounding residents and owners, and contributes to the overall detriment of the city;

Whereas, graffiti constitutes a public nuisance and a threat to public safety which must be abated to alleviate the detrimental impact of such graffiti on the city, and to prevent the further spread of graffiti;

Whereas, certain categories of graffiti which incite violence, are especially harmful and must be removed as quickly as possible to avoid or minimize harm to persons and the whole community; and

Whereas, there has been an recent increase in the amount of graffiti in the community;

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the City of San Luis, State of Arizona, as follows:

Section 1: Section 1. Purpose and intent.

The purpose of this ordinance is to provide a program for abatement of graffiti from public and private property to reduce blight and deterioration within the city, protect public safety, and to expedite removal of graffiti from structures on both

public and private property. The city council finds and determines as follows:

(a) The increase of graffiti, on both public and private property, is creating a condition within the city which results in blight and deterioration of property values and of the comfortable enjoyment of life and property for adjacent and surrounding residents and owners, and contributes to the overall detriment of the city.

(b) Graffiti constitutes a public nuisance and a threat to public safety which must be abated to alleviate the detrimental impact of such graffiti on the city, and to prevent the further spread of graffiti.

(c) Certain categories of graffiti which incite violence, are especially harmful and must be removed as quickly as possible to avoid or minimize harm to persons and the whole community.

Section 2. Definitions.

For the purposes of this ordinance, the following words and terms shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

Aerosol paint container means any aerosol container which is adapted or made for the purpose of spraying paint.

Broad tip marker means any marker or similar implement which has a writing surface which is one-half (1/2) of an inch or greater and containing anything other than a solution which can be removed with water after the solution dries.

Graffiti means a drawing or inscribing a message, slogan, sign or symbol or mark of any type that is made on any public or private building, structure or surface, and that is made without permission of the owner.

Graffiti implement means an aerosol paint container, broad tip marker, paint stick, graffiti stick or bleeder.

Nonprofit organization means any organization which has registered or filed as a nonprofit corporation or organization with a state or federal agency.

Paint stick, graffiti stick, or bleeder means an implement containing paint, wax, epoxy, or other similar substance.

Responsible party means an owner, occupant, lessor, lessee, manager, licensee, or other person having the right to control such property.

Section 3. Possession of graffiti implements prohibited.

(a) No person shall knowingly possess any graffiti implement with the intent to use the implement for the purpose of committing criminal damage.

(b) It shall be unlawful for any person under the age of eighteen (18) years of age to possess a graffiti implement unless (1) such person is under the direct supervision of a parent, legal guardian or teacher, or (2) such person is within the scope and course of such person's employment or involvement with an activity sanctioned by a school, church or nonprofit organization.

(c) Violation of this section by an adult is a class 1 misdemeanor, punishable by a term of not less than forty-eight (48) hours in jail and not less than eighty (80) hours of community service. Violation of this section by a juvenile is a class 1 misdemeanor, punishable as provided for in title 8, Arizona Revised Statutes.

Section 4. Limiting access to graffiti implements.

(a) The sale, purchase, manufacture, possession, exchange, or use of any graffiti implement, except as provided by this ordinance, is unlawful.

(b) No person other than a parent or legal guardian shall sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any person under the age of eighteen (18) years.

(c) No merchant shall sell, exchange, or otherwise transfer any graffiti implement to any person under the age of twenty-one (21) years. For sales of graffiti implements to persons twenty-one (21) years or older, such sales must only be to persons who have been issued a permit for the use of graffiti implements. Any resident twenty-one (21) years or older may make application for a permit for the use of graffiti implements. The application

shall include the following information:

1. The type and quantity of graffiti implements being requested, and the specific purpose for the use of the graffiti implements.

2. The length of time necessary to use the graffiti implements.

3. Upon presentation of a properly executed permit, merchants in the City are authorized to sell to the person named in the permit the quantity and type of graffiti implements allowed by the permit.

4. The permit shall expire seven (7) days after issuance, at which time the Applicant will turn in all implements used or unused included in the permit.

(b) Evidence that a person, his or her employee, or agent demanded and was shown a permit issued pursuant to this ordinance and reasonably acted upon such permit in a transaction or sale shall be a defense to any prosecution under this section.

(c) This section does not apply to the transfer of graffiti implements from parent to child, guardian to ward, employer to employee, teacher to student or in any other similar relationship when such transfer is for a lawful purpose.

(d) A violation of this section is a civil offense punishable pursuant to the provisions of 10-3-22 of the City Code as adopted by Ordinance No. 189. A first offense shall be subject to a fine of one hundred dollars (\$100.00) and twenty (20) hours of community service. A second offense within any twenty-four (24) month period shall be subject to a fine of three hundred dollars (\$300.00) and forty (40) hours of community service. A third and subsequent offense within any twenty-four (24) month period shall be subject to a fine of not less than five hundred dollars (\$500.00) and sixty (60) hours of community service.

Section 5. Storage and display of graffiti implements.

(a) No person who owns, conducts, operates or manages a business, where aerosol paint containers or broad tip markers are sold, nor any person who sells or offers for sale aerosol paint containers or broad-tipped markers, shall store or display, or

cause to be stored or displayed, such aerosol spray paint containers and broad tip markers in an area that is accessible to the public without employee assistance in the regular course of business pending legal sale or other disposition.

(b) Nothing herein shall preclude the storage or display of aerosol paint containers and broad tip markers in an area viewable by the public so long as such items are not accessible to the public without employee assistance.

(c) A violation of this section is a civil offense punishable pursuant to the provisions of 10-3-22 of the City Code as adopted by Ordinance No. 189. A first offense shall be subject to a fine of one hundred dollars (\$100.00). A second offense within any twenty-four (24) month period shall be subject to a fine of three hundred dollars (\$300.00). A third and subsequent offense within any twenty-four (24) month period shall be subject to a fine of not less than five hundred dollars (\$500.00).

Section 6. Graffiti prohibition and removal.

(a) Graffiti prohibited. All sidewalks, walls, buildings, fences, signs, and other structures or surfaces shall be kept free from graffiti when the graffiti is visible from the street, right-of-way or other public or private property.

(b) Notice of violation. If it is determined by the city that graffiti exists on property in violation of this article, the city may, in writing, notify the responsible party with a notice of violation. The notice may be served by certified mail, personal service, or by posting the subject property and publishing the notice in the official city newspaper.

(c) Contents of notice of violation. The notice of violation shall identify the property in violation, shall generally describe the location of the graffiti, and shall direct that the graffiti be abated within seven (7) calendar days of receipt of the notice. The notice shall state that in the event the responsible party fails to abate the graffiti within the time period specified in the notice of violation, the city may abate

the graffiti and bill the responsible party for the costs. The notice shall state that the responsible party may appeal the notice by filing a written notice of appeal with the city manager before the time period for abating the graffiti expires. The receipt date of the notice of violation shall be the date received if delivered in person or sent by certified mail, or the

date of first publication, if the alternate method of service is used.

(d) City's authority to abate. If the responsible party fails to abate the graffiti as required by the notice of violation, the city may proceed to abate the graffiti and bill the responsible party for the costs thereof. The city or its authorized private contractor is expressly authorized to enter private property and abate graffiti thereon in accordance with this section. The city police department shall assist in the enforcement of this article.

Section 7. Penalties.

A judge shall not suspend any part or all of the imposition of any jail time, community service, or fine required by this ordinance.

Section 8: Ordinance No. 122 of the City of San Luis, as amended, is hereby repealed. In the event of a conflict between the provisions of this Ordinance and any other ordinance, resolution, regulation, or policy regarding the purchasing policies of the City of San Luis, the conflicting provisions are hereby repealed, superseded, and replaced, and the provisions of this ordinance shall govern.

Section 9: If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 10: Whereas, it is necessary for the preservation of the peace, health, safety and welfare of the City of San Luis, Arizona, and for further reason that pending purchases, financial considerations, and the best interest of the City require the amendments to go into immediate effect, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of posting hereof.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 26th day of January, 2005.



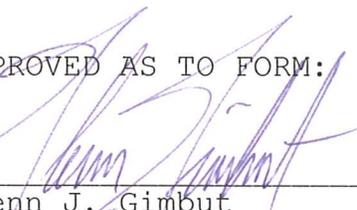
Guillermina Fuentes, Mayor

ATTEST:



Rosalicia Cordova, City Clerk

APPROVED AS TO FORM:



Glenn J. Gimbut
City Attorney