



Proposed graffiti ordinance seeks harsher punishment for vandalism



A mural painted on the side of a building on Willow Street in West Oakland.

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This month, the city council's Public Works Committee will consider a new graffiti ordinance, which aims to bolster Oakland's current vandalism laws by inflicting harsher penalties on offenders and offering support for property owners frequently targeted by graffiti writers. The "Graffiti Enforcement Program" proposed by City Attorney Barbara Parker and District 3 representative Nancy Nadel, would enhance a section of the city's municipal code which presently only addresses graffiti abatement procedures and prohibits the sale and possession of pressurized paint cans and markers to minors.

If passed, the ordinance would provide more comprehensive regulations. Violations would go from being infractions to misdemeanors, which carry increased penalties. Parents of an underage offender could be held liable for property damages. Fines paid to the city from offenders would be used to reimburse the owners of properties that are repeatedly vandalized. The ordinance would give property owners ten days to remove graffiti from their premises.

Currently, it is up to the city to assess the damage sustained to public property by vandalism. This value can range from hundreds to thousands of dollars. If passed, the ordinance would adopt the state of California's vandalism penal code, which defines misdemeanor vandalism as resulting in repair costs worth "greater than \$250 and less than \$400." First time offenders can be charged with a maximum fine of \$1,000 and sent to jail for a year. Repeat offenders can be charged up to \$5,000.

Any damage estimated to be worth over \$400 in repairs is considered a felony in California. A prosecutor can charge up to \$50,000 for repeat offenders if the estimated damage is worth over \$10,000. This can also carry a maximum jail sentence of 16 months, if the person is convicted.

Under the proposed ordinance, in place of paying fines, a person charged with these offenses can opt to participate in a "restorative justice" program, one that attempts to bring together victims and offenders. Following a face-to-face meeting between the offender and people or communities harmed, victims can decide what is needed to repair the damages. This can include asking the offender to perform community service or participate in group conferencing with family members. "With this process, often times the person exhibiting the bad behavior is transformed," said Nadel. "We're trying to adopt restorative justice practices rather than opting for incarceration or other kinds of punishment."

Oakland has contracted a local non-profit, Community Works, to process their current restorative justice cases. Community Works, which received a \$1 million grant from the California Department of Corrections and Rehabilitation last year, is set to handle approximately 100 juvenile cases annually. Their program requires a 6 to 8 month commitment and involves social workers, police officers, and youth mentors.

"This provides us with more tools to use against graffiti violators," said Richard Illgen, Supervising Deputy City Attorney, speaking in a phone interview last week about the proposed ordinance. "In the event the city doesn't have the resources to prosecute, we can fine offenders, charge them with punitive damages, and get recovery for costs involved." This includes the implementation of civil remedies for victims of vandalism, and the consolidation of resources used to pay for private and public lawsuits.

Illgen cited the vandalism sustained during the Occupy Oakland protests as an impetus for the ordinance. "The idea is that these acts are unpermitted," he said.

At a general meeting of the West Oakland Commerce Association last Thursday night, several local business owners discussed the proposed ordinance. "Some people get hit constantly," said Mike Herling, who owns an industrial janitorial service company in West Oakland. "I know a building owner who hired two guys for eight hours to clean up graffiti sprayed Monday night. They [graffiti writers] came back Tuesday night and did it again. The city simply doesn't have the resources to effectively deal with this problem."

Oakland's Public Works department is responsible for the abatement of blighted public property. However, the graffiti abatement program is only obligated to provide "one courtesy abatement on private property," according to the city's website. Private property owners can face hefty fines from the Public Works department if graffiti is not cleaned up in a timely manner.

"It's an obvious challenge if the same business gets targeted over and over again," said Paul Junge, public policy director for Oakland's Chamber of Commerce, in a phone interview last week. "The city makes some effort to help, but mostly the responsibility is left to the property owners."

But not all of the business owners present at the meeting favored the ordinance. CB Smith-Dahl, the owner of Community Bridge Video and a community organizer who advocates for at-risk youth, said she believes the ordinance is an overreaction and criminalizes teenage behavior. "Responsible street artists follow a certain code," she said. "They won't deface or put art onto peoples homes. I think this approach that Nadel has, while well intentioned, is going to sweep both innocent artists and rebellious kids going through a normal stage up in the net."

To some Oakland residents, there is a fine line between what's considered art and what's a public nuisance. People who view certain types of graffiti as street art worry that this shotgun approach to dealing with graffiti fails to differentiate between taggers and vandals or those who render more artistic works, such as murals.

"Graffiti ordinances are something that repeat themselves every couple of years," said Desi W.O.M.E., founder of the Community Rejuvenation Project, a collective of artists who seek to address urban blight through the creation of murals. "Oakland is consistently in an economic deficit and on some level, they're attempting to balance the budget on the back of the youth here."

W.O.M.E., who uses these initials as his surname, believes that if the ordinance passes more young people will be arrested and stuck with fines they or their families can't pay off. He sees the ordinance as an attempt to increase fines in order to generate revenue for the city. "It would be better for the city to instead fund community-based projects that engage graffiti artists of all ages.," W.O.M.E said. "It needs to be proactive, not punitive."

"We're a bit skeptical of whether this ordinance represents much more than window dressing, and whether the impact ultimately will be increased criminalization of youth," wrote Eric Arnold, director of communications for the Community Rejuvenation Project, in an email. "We'd like to see a restorative justice approach applied here, along the lines of the Precita Eyes organization in the Mission District, which teaches youth art skills, and has a more beautifying effect on the community than simple abatement and repainting of walls."

The Precita Eyes Mural Association is a community arts organization which has created more than 80 murals in San Francisco. Precita Eyes also offers art classes to the community.

A staffer with the restorative justice organization the city has contracted also raised questions about whether such organizations are well-suited to handle the cases that may result from the ordinance. According to Denise Curtis, manager of Community Works' restorative justice program, which would handle many of the young people cited if the new ordinance passes, their program was developed to handle offenses more serious than graffiti-writing. The majority of the cases they take are for people who have committed high-level misdemeanors and felonies such as non-firearm related burglaries and robberies.

"Restorative justice works best when there's a direct victim," Curtis said. "With graffiti, the victim is the entire community."

The city council's Public Works Committee is scheduled to discuss this ordinance during its November 27 meeting.

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