ANALYSIS

This ordinance amends Title 1 – General Provisions of the Los Angeles County Code relating to administrative fines and noncompliance fees for code violations and Title 13 – Public Peace, Morals and Welfare of the Los Angeles County Code relating to graffiti prevention, prohibition, and removal, to:

- Provide that, for violations relating to graffiti offenses, a notice of violation may be issued by a peace officer or a probation officer on behalf of the issuing County department;

- Authorize the department head of the issuing department to approve community service for violations relating to graffiti offenses in lieu of payment of an administrative fine or noncompliance fee;

- Provide for the County to recoup its graffiti apprehension and abatement costs associated with graffiti offenses committed by minors through the Probation Officer of the County in juvenile court proceedings; and

- Provide for summary abatement for violations relating to graffiti and a procedure for the County to recoup its abatement costs and impose a lien or special assessment for unpaid costs against the graffiti perpetrator, and his or her parent or guardian, if applicable.

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SJS:ss

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ORDINANCE NO. _____

An ordinance amending Title 1 – General Provision of the Los Angeles County Code relating to administrative fines and noncompliance fees for code violations and Title 13 – Public Peace, Morals and Welfare of the Los Angeles County Code relating to graffiti prevention, prohibition, and removal.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 1.25.020 is hereby amended to read as follows:

1.25.020 Definitions.

. . .

E. Issuing department. The county department that issues a notice of violation and that has authority and responsibility for enforcing the code section that is the subject of the notice of violation. For violations relating to graffiti offenses, a notice of violation may be issued by a peace officer or a probation officer on behalf of the issuing department.

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SECTION 2. Section 1.25.050 is hereby amended to read as follows:

1.25.050 Imposition of administrative fines.

. . .

D. Unless a responsible person requests an administrative hearing to contest the imposition of the administrative fine, pursuant to Section 1.25.080, or has requested permission to perform community service pursuant to Section 1.25.075, the notice of administrative fine shall constitute the final administrative order of the county with

respect to said administrative fine, and the fine shall be due and payable by the responsible person(s) to the issuing department within ten (10) calendar days following service of the notice of administrative fine.

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SECTION 3. Section 1.25.070 is hereby amended to read as follows:

1.25.070. Imposition of noncompliance fees.

. . .

C. Unless a responsible person requests an administrative hearing to contest the imposition of the noncompliance fee, pursuant to Section 1.25.080, or has requested permission to perform community service pursuant to Section 1.25.075, the notice of noncompliance fee shall constitute the final administrative order of the county with respect to said noncompliance fee, and the fee shall be due and payable by the responsible person(s) to the issuing department within ten (10) calendar days following service of the notice of noncompliance fee.

. . .

SECTION 4. Section 1.25.075 is hereby added to read as follows:

1.25.075 Request to perform community service for violations relating to graffiti.

A. Request to perform community service for violations relating to graffiti in lieu of administrative fine and/or noncompliance fee. Any responsible person(s) served with a notice of administrative fine and/or a notice of noncompliance fee for a violation of Chapter 13.12 of this code relating to graffiti may request to perform community

service in a program approved by the issuing department in lieu of payment of the administrative fine and/or noncompliance fee.

B. Written request. Any eligible responsible person(s) served with a notice of administrative fine and/or a notice of noncompliance fee who requests permission to perform community service in lieu of payment of an administrative fine or noncompliance fee, as provided in subsection A, must make the request in writing and file it with the issuing department within five (5) calendar days following service of the notice of administrative fine and/or the notice of noncompliance fee. The request shall also include the address of the responsible person(s) for the purpose of correspondence by the issuing department.

C. Notification of approval or denial of request and required completion date. The issuing department shall notify the responsible person(s) by first class mail, postage prepaid, whether the request to perform community service has been approved, and if approved, shall identify the program(s) that the responsible person must complete, and the date by which such program shall be completed. The decision to grant or deny the request shall be in the sole discretion of the issuing department. In the event the issuing department denies the request to perform community service, the administrative fine and/or the noncompliance fee otherwise payable as set forth in the notice of administrative fine and/or the notice of noncompliance fee previously served on the responsible person shall be made by the date specified in the notice denying the request to perform community service.

D. Suspension of administrative fine. The obligation to pay the administrative fine or noncompliance fee otherwise required under subsection A of Section 1.25.050 or subsection A of Section 1.25.070 shall be suspended during the time period provided for completion of the approved program as set forth in the written notification approving the request sent by the issuing department under subsection C, above.

E. Proof of successful completion of community service. The responsible person(s) shall provide proof of completion of the approved program by submitting, to the issuing department within five (5) calendar days following the date by which the program was to be completed, a certificate of completion issued by the program provider. Failure to present such proof within the required time period shall result in the reinstatement of the administrative fine and/or noncompliance fee otherwise due under subsection A of Section 1.25.050 or subsection A of Section 1.25.070 without further notification by the issuing department and payment of the amount due shall be made within seven (7) calendar days of the date by which the program was to be completed as specified in the notice provided under subsection C, above.

SECTION 5. Section 13.12.010 is hereby amended to read as follows

13.12.010 Purpose and intent.

. . .

B. California Government Code ~~S~~sections 53069.3 and 38772 authorize~~s~~ the county, under certain circumstances, to provide for the removal and the summary abatement of graffiti and other inscribed materials from private as well as public property. The board of supervisors finds and determines that graffiti is obnoxious and a

public nuisance, as well as an immediate threat to public health and safety, and unless the county causes it to be removed from county-owned and non-county-owned property within the unincorporated area of the county, it tends to remain. Other properties then become the target of graffiti, often accompanied by more violent crime, with the result that entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the county.

. . .

SECTION 6. Section 13.12.030 is hereby amended to read as follows:

13.12.030 Unlawful to apply graffiti -- Prohibition of defacement.

. . .

E. Violation of subsection A of this section shall be ~~a misdemeanor punishable by a fine not to exceed $500.00 or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment~~subject to enforcement through civil abatement and/or administrative fine and noncompliance fee proceedings.

. . .

SECTION 7. Section 13.12.105 is hereby added to read as follows:

13.12.105 Recovery of costs by county probation officer for defacement of county property and the property of others through juvenile court proceedings.

A. Juvenile court restitution order. In cases where a petition has been filed pursuant to section 602 of the Welfare and Institutions Code, the probation officer of the county may seek recovery through juvenile court proceedings in accordance with

sections 742.14 and 742.16 of the Welfare and Institutions Code of the costs associated with the defacement by minors of its property and the property of others by graffiti or other inscribed material.

B. Findings regarding costs incurred by the sheriff's department in identification and apprehension. The board of supervisors finds that the average cost incurred by the sheriff's department in identifying and apprehending a person subsequently convicted of a violation of section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code or a minor subsequently found to be a person described in section 602 of the Welfare and Institutions Code by reason of the commission of an act prohibited by section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code is $665.00.

C. Findings regarding costs incurred for removal, repair, and/or replacement. The board of supervisors finds that the average cost to the county of removing graffiti and other proscribed material, and of repairing and replacing property of the types frequently defaced with graffiti or other inscribed material that cannot be removed cost effectively, is $522.00 per incident of graffiti vandalism.

D. Transmittal and periodic review of findings. A certified copy of the ordinance containing the findings set forth in subsections B and C, above, shall be transmitted to the clerk of the juvenile court and the probation officer. The findings set forth in subsections B and C, above, shall be reviewed at least once every three years at which time the board of supervisors shall adopt any updated cost findings.

E. Transmission of data to probation officer. As provided by Welfare and Institutions Code section 742.16, the county shall transmit to the probation officer its data about its expenditure of resources in identifying and apprehending any minor about whom a petition is filed alleging that the minor is a person described in section 602 of the Welfare and Institutions Code by reason of commission of an act prohibited by section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code, and its expenditure of resources to remove graffiti or other material inscribed, or to repair or replace property where it is not cost effective to remove graffiti or other inscribed material, by any minor about whom a petition is filed alleging that the minor is a person described in section 602 of the Welfare and Institutions Code by reason of commission of an act prohibited by section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code.

SECTION 8. Section 13.12.115 is hereby added to read as follows:

13.12.115 Summary abatement and responsibility for expense of abatement.

A. Summary abatement. As an alternative to the removal provisions set forth in Section 13.12.110, the director of the department of public works or his or her designee or any additional department head as authorized by the board of supervisors, may summarily abate any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material at the expense of the minor or other person creating, causing, or committing the nuisance and make the expense of abatement of the nuisance a lien against the property of the minor or other person and a personal obligation against the minor or other person.

B. Joint and several liability of parent or guardian. The parent or guardian having custody and control of a minor committing a nuisance described in subsection A, shall be jointly and severally liable with the minor for the expense of abatement. The unpaid expense of abatement of any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material shall become a lien against the property of a parent or guardian having custody and control of the minor, and a personal obligation against the parent or guardian having custody and control of the minor.

C. The county probation officer shall report the names and addresses of the parent or guardian having custody and control of a minor committing a nuisance described in subsection A, if known, to the county recorder and to the department of public works.

D. Definitions. For the purpose of this section, the following terms have the following meanings:

1. "Expense of abatement" includes, but is not limited to, court costs, attorney's fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, and the law enforcement costs incurred by the county in identifying and apprehending the minor or other person.

2. "Graffiti or other inscribed material" means any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property.

3. "Minor" or "other person" means a minor or other person who has confessed to, admitted to, or pled guilty or nolo contendere to a violation of section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code; or a minor convicted by final judgment of a violation of section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code; or a minor declared a ward of the juvenile court pursuant to section 602 of the Welfare and Institutions Code by reason of the commission of an act prohibited by section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code.

E. Collection of expenses of abatement.

1. Abatement expense statement. Upon the determination of the expense of abatement, the sheriff, the director of the department of public works, the county ombudsman, or his or her designee, or any additional department head as authorized by the board of supervisors, shall send an abatement expense statement to the responsible person(s) pursuant to subsection A, and if applicable, subsection B, above. Payment shall be due fifteen (15) days from the service of the abatement expense statement. Failure to pay the full amount specified in the abatement expense statement within the required time period shall constitute an additional violation of this chapter, and administrative fines and/or noncompliance fees pursuant to Chapter 1.25 may be assessed in addition to any other fine, penalty, fee, charge, notice of violation, or other remedy that may be imposed.

2. Hearing; Notice.

a. Within ten (10) days of the mailing of the abatement expense statement, any person served with an abatement expense statement may file with the county representative who issued the statement, a written request for a hearing on the correctness, reasonableness, or both of such claim of abatement costs. The sheriff, the director of the department of public works or his or her designee, or any additional county department head, as authorized by the board of supervisors, shall then cause notice of the time and place of the hearing before the sheriff or the director of the applicable department or his or her designee to be given to the person requesting the same by the United States mail, postage prepaid, addressed to the person at his/her last known address at least five days in advance of the hearing.

b. At the hearing, the sheriff or director of the applicable department or his or her designee shall receive all evidence presented by the responsible person and by the county. Thereupon, the sheriff or director of the applicable department or his or her designee shall make such revision, correction, and modification to the statement as deemed warranted, after which the statement as submitted, or as revised, corrected, or modified, shall be confirmed. The decision of the sheriff or the director of the applicable department or his or her designee shall be final.

c. Suspension of abatement costs. The obligation to pay the expenses of abatement otherwise required under subsection E.1 of this section shall be suspended during the pendency of any hearing provided for under subsection E.2, above. Upon the sheriff or the director of the applicable department or his or her

designee rendering his or her decision following a hearing, payment of the confirmed or otherwise revised, corrected, or modified abatement expense statement shall be made within ten (10) days following service of the sheriff or the director of the applicable department's decision upon the responsible person.

3. Lien against real property for unpaid expenses.

a. The county may make the unpaid expenses of abatement a lien against the property of the person committing a nuisance described in subsection A, above, and, where such person is a minor, against the property of the parent or guardian having custody and control of such minor.

b. Notice. Notice shall be given to the minor or other person and to the parent or guardian having custody and control of the minor prior to the recordation of a lien on the parcel of land owned by the minor or other person, or owned by the parent or guardian having custody and control of the minor.

c. Service of notice. Notice shall be served in the same manner as a summons in a civil action pursuant to Article 3 (commencing with section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the minor or other person, and/or the parent or guardian having custody and control of the minor, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the minor or other person, and/or the parent or guardian having custody and control of the minor, in a conspicuous place, for a period of ten (10) days. The notice shall also be published pursuant to Government

Code section 6062 in a newspaper of general circulation that is published in the county in which the property is located.

d. A graffiti nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located. From the date of recording, the lien shall have the force, effect, and priority of a judgment lien.

e. A graffiti nuisance abatement lien authorized by this section shall specify the amount of the lien; the name of 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 owner of the parcel.

f. If the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection e, above, shall be recorded by the county. A graffiti nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

g. A graffiti nuisance abatement lien may be satisfied through foreclosure in an action brought by the county.

h. As provided in California Government Code section 38773.2, the county recorder may impose a fee on the county to reimburse the costs of processing and recording the lien and providing notice to the property owner. The county may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

4. Assessment of Costs Against Property For Unpaid Expenses. The unpaid expenses for abating a graffiti nuisance, as confirmed by the board of supervisors, shall constitute a special assessment against the lot or parcel of property owned by the person committing a nuisance described in subsection A, above, and, where such person is a minor, against the lot or parcel of property owned by the parent or guardian having custody and control of such minor, and upon recordation in the Office of the Los Angeles County Recorder of a notice of lien, as so made and confirmed, shall constitute a lien on the property for the amount of such assessment.

a. After such confirmation and recordation, a copy shall be filed with the Assessor and Tax Collector of Los Angeles County in order that said officials may add the amounts of the respective assessments to the next regular tax bills levied against the respective lots and parcels of land, and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes; or

b. After such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

F. Upon the entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property or a minor or other person as defined in this section is responsible for a condition that may be abated in accordance

with this provision, except for conditions abated pursuant to section 17980 of the Health and Safety Code, the court may order that person to pay treble the costs of the abatement.

SECTION 9. Section 13.12.130 is hereby amended to read as follows:

13.12.130 Penalties and civil liability of parents.

It is the county's intent that pursuant to California Penal Code ~~S~~section 640.6(a), all acts of graffiti vandalism occurring within the county shall be prosecuted as misdemeanors pursuant to California Penal Code ~~S~~section 594, et seq., ~~or this chapter~~and subject to enforcement through civil abatement and administrative fines and/or noncompliance fee proceedings.

A. Criminal Penalties. Except for violations of Section 13.12.030A, which shall be enforceable as otherwise provided for in Section 13.12.030E, and except for violations of Sections 13.12.030B~~,~~ and 13.12.030C~~, 13.12.070, and 13.12.080~~ which shall be punishable as infractions, any violation of this chapter shall be a misdemeanor punishable by either six months in jail, a $500.00 fine, or by both such fine and imprisonment, and by the performance of community service in the form of graffiti clean-up to the maximum extent permitted by law. Each person, firm, corporation, or partnership shall be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of the provisions of this code is committed, continued, or permitted by such a person, firm, corporation, or partnership, and shall be deemed punishable thereof as provided in this section.

B. Parental Liability. Any parent or guardian having custody and control of a minor who violates any section of this chapter, shall be personally liable for any and all costs to the county or any person or business incurred in connection with the removal of graffiti caused by conduct of said minor, and for all attorney's fees and court costs incurred in connection with the civil prosecution of any claim for damages or reimbursement not to exceed $10,000.00 for each violation of the minor.

SECTION 10. Section 13.12.140 is hereby amended to read as follows:

13.12.140 Violations -- Administrative fines and noncompliance fees; ~~C~~civil remedies available.

Administrative fines and noncompliance fees may be imposed against any person who violates any provision of this chapter. Additionally, ~~A~~a violation of any of the provisions of this chapter shall constitute a nuisance and may be abated by the county through civil process by means of a restraining order, preliminary or permanent injunction, or in any manner provided by law for the abatement of such nuisance.

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