

AN ORDINANCE

AMENDING CHAPTER 33, ARTICLE VI. GRAFFITI CONTROL OF THE CITY CODE OF ORDINANCES BY REVISING THE PROVISIONS REGARDING NOTICE REQUIREMENTS, THE HEARING PROCESS, ERADICATION EFFORTS AND PROVIDING FOR LIENS; PROVIDING FOR SEVERANCE; PROVIDING FOR PUBLICATION; PROVIDING FOR PENALTIES; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. That Chapter 33, Offenses and miscellaneous provisions is amended by revising Article VI, Graffiti Control, to read as follows:

ARTICLE VI. GRAFFITI CONTROL

DIVISION 1. GENERAL PROVISIONS

Sec. 33-100. Purpose and intent.

The city council enacts this article to help prevent the spread of graffiti vandalism and to facilitate removal of graffiti from public and private property.

The council finds that graffiti is a public nuisance and destructive of the rights and values of property owners and the entire community. Unless the city acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are infected and become less desirable places in which to live and support families. Graffiti erodes property values which reduces critical tax base. Graffiti intimidates citizens and promotes a lawbreaking environment.

The council finds that existing law is inadequate to combat graffiti in the city. This article is intended to provide additional enforcement tools to protect public and private property from graffiti, and shall not be construed to conflict with existing state laws.

The council finds that property owners must take responsibility for removal of graffiti on their property. This may be done by removal or overpainting by the property owner, or by the property owner providing written permission for removal by the city or its agents, volunteers or community service painting groups.

Sec. 33-101. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases shall have the meanings designated.

Aerosol paint container means any aerosol container that is adapted or made for the purpose of applying spray paint or any other substances capable of defacing property.

Consent means assent in fact, express or apparent, by the owner of real property or a person legally authorized to act for the owner.

Felt tip marker means any felt tip marker or similar implement with a flat or angled writing surface that, at its broadest width, is three-eighths of one inch or greater, containing ink whether water soluble or not.

Graffiti means any unauthorized inscription, word, letter, figure, painting, drawing, mark, or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property.

Graffiti implement means any aerosol paint container, paint gun, paint ball gun, felt tip marker, paint stick or graffiti stick, brush, or etching tool or etching device, or any other device that facilitates or is capable of scarring, marking, or otherwise defacing glass, metal, concrete, wood, or any surface.

Minor means, for the purposes of this article, any person under ~~twenty-one~~ (21)eighteen (18) years of age.

Owner means any person who has title to the real property or legal right to control the property, including the owner's authorized representative.

Paint stick or graffiti stick means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface, and upon application, leaving a visible mark.

Removal means any method of obscuring, covering, eradicating, sandblasting, treating, overpainting, or washing which serves to combat the existence and appearance of graffiti.

Unauthorized means without the advance consent of the owner and without authority of law, regulation, or ordinance.

Volunteer or Community service painting groups means organizations whose activities include projects to cover graffiti. This purpose does not include painting houses, fences, or structures to enhance their value.

DIVISION 2. OFFENSES

Sec. 33-102. Defacement.

(a) *Application of graffiti.* Application of graffiti is unlawful under Texas Penal Code 28.03 (criminal mischief) and Texas Penal Code 28.08 (graffiti) and shall be prosecuted thereunder.

(b) *Applicator's failure to remove graffiti.* A person who applies graffiti commits an offense every day the person fails to remove the graffiti and restore the property to its original condition.

(c) *Parental duty.* A parent may be prosecuted under city Code section 33-489 for lack of supervision related to graffiti. A parent's civil liability for graffiti damage by a child is controlled by Texas Family Code section 41.001.

Sec. 33-103. Possession of graffiti implement.

(a) *Minor's possession of graffiti implement.* A minor commits an offense if the minor possesses a graffiti implement on public or private property. It shall be a defense to prosecution that the graffiti implement was possessed with the

advance consent of the property's owner. It shall be a further defense to prosecution that the graffiti implement was possessed in a place where it was going to be used in a nongraffiti activity, such as employment, school, church, art, or other activity, or enroute to or from such place.

(b) *Closed property; possession of graffiti implement.* A person commits an offense if he possesses a graffiti implement in any publicly-owned or privately-owned building, facility, park, school ground, playground, swimming pool, right-of-way, or other property, or grounds thereof, when such property is closed to the public. It shall be a defense to prosecution that the person's presence in the closed area was with the advance consent of the owner.

Sec. 33-104. Removal of graffiti by property owner; city removal of graffiti upon failure of property owner to do so; notice required.

(a) *Property owner's failure to remove graffiti.* A person commits an offense if the person is the owner of the real property and knowingly fails to remove and fails to consent to the removal of graffiti from the property, including any appurtenances, within ~~thirty (30)~~ seven (7) days of receipt of written notice provided by the city in accordance with subsection (e) of this section when the graffiti is visible from:

- (1) A public place;
- (2) Public right-of-way; or,
- (3) Another person's real property.

~~(b) *Presumed lack of consent to apply.* Unless the owner proves otherwise, lack of consent will be presumed under circumstances tending to show:~~

- ~~(1) That there is no evidence of specific written authorization of the graffiti by the property owner;~~
- ~~(2) That the graffiti is inconsistent with the design and use of the subject property; or,~~
- ~~(3) That the person applying the graffiti was unknown to the property owner.~~

~~(e) *Defense.* It is a defense to prosecution that the defendant consented to placement of the graffiti in advance of its application.~~

~~(d) *City may remove graffiti.*~~

~~If the property owner refuses to consent to the removal of the graffiti from the premises after receiving the notice required by subsection (e) of this section, the city has the right to remove the graffiti from the premises or to have the graffiti removed from the premises by volunteer or community service painting groups.~~

(eb) *Notice of violation and right to due process hearing.* The city must notify the real property owner in writing that the owner's property appears to have graffiti; ~~inform the owner that free removal is available through a specified program,~~ and inform the owner that the owner's consent to removal through the designated program by the city will be presumed unless the owner notifies the

city otherwise within ~~fifteen (15)~~ seven (7) days of the notice and requests a hearing in accordance with subsection (c). The notice may be served by handing it to the person or by United States certified mail, return receipt requested, addressed to the owner at the owner's post office address as shown on the tax rolls of the city or of the county in which the premises are located. If the owner cannot be found or the letter is returned by the United States Postal Service, then the owner may be notified by:

- ~~(1) Publishing the notice two (2) times in a newspaper of general circulation;~~
- ~~(2) Posting the notice on or near the front door of each building on the premises to which the violation relates; or~~
- ~~(3) Posting the notice on a placard attached to a stake driven into the ground on the premises to which the violation relates, if the premises contain no buildings.~~

Notice under this Article shall be given:

- (1) Personally in writing to the owner; or
- (2) By U.S. mail addressed to the owner's address or P.O. Box; or
- (3) By posting the notice on or near the front door of the main building on the property to which the violation relates; or
- (4) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

(c) Hearing process. The owner of real property subject to abatement under this Article refusing consent to removal may request a hearing by notifying the city within seven (7) days following the date the city serves the required notice. The hearing shall be conducted by a hearing official designated by the city manager for the purpose of determining whether the conditions constitute a public nuisance under the provisions of this Article. Unless notice is waived by the owner, the owner shall be provided written notice of the time and place of the hearing at least seven (7) days prior thereto. At the hearing, the owner and the city may present any evidence relevant to the proceedings. If the hearing official finds that conditions constituting a nuisance exist, the hearing official shall issue an order so stating and that, unless the graffiti is removed within forty-eight (48) hours, the city shall enter upon the property, abate the graffiti, and provide the owner with a statement of the costs of the eradication effort on a full cost recovery basis. The determination of the hearing official after the hearing shall be final and not appealable.

(d) Eradication effort. Not sooner than the time specified in the order of the hearing official, the city manager, or the city manager's designee, shall implement the eradication order and shall provide a statement of costs to the owner demanding payment of the actual associated abatement costs within thirty (30) days of receipt, in addition to a \$50.00 administrative processing fee. The city may also assess additional charges for actual costs incurred during extraordinary abatement efforts.

(e) *Written Consent.* Written consent given by the owner or the owner's representative to enter and abate graffiti on the property constitutes continuing consent and shall remain in effect for future abatement actions until revoked in writing by the owner or owner's representative.

(f) *Liens.* If any invoice or statement of costs has not been paid within the specified time period, the city manager, or the city manager's designee, may file a statement of expenses incurred with the County Clerk of the county stating the owner's name, if known, and the legal description of the lot or parcel. The statement of expenses or a certified copy of the statement shall be prima facie proof of the expenses incurred. Such statement shall be and the city shall have a privileged lien for expenditures made and interest accruing at the rate allowed by law on the amount due from the date incurred by the city. Such liens shall be inferior only to tax liens and liens for street improvements. The city may foreclose such liens in a proceeding brought in accordance with applicable law. The remedy allowed in this subsection shall not be the city's sole remedy.

(g) Any monetary amounts collected or monetary donations received under this Article are designated within the general fund to be used for activities consistent with graffiti eradication.

Sec. 33-105. Criminal penalty.

An offense under this article shall be punishable by a fine of five hundred dollars (\$500.00).

DIVISION 3. ANTI-GRAFFITI ACTION

Sec. 33-106. Anti-graffiti action.

The city manager or city manager's designee is directed to implement, as resources permit, measures aimed at graffiti control, including but not limited to:

- (1) Providing public information on free and restitutorial graffiti removal programs and on contractors who perform removal services.
- (2) Coordinating governmental and volunteer graffiti removal programs through the formation of a graffiti task force made up of community stakeholders working on the eradication of graffiti.
- (3) Providing information on methods to discourage graffiti, such as building techniques, lighting, and landscaping.
- (4) Creating a reward program for information concerning graffiti vandals, with public advertisement thereof.
- (5) Removing of graffiti promptly from city-owned property, including traffic boxes.
- (6) Requiring property owners to remove graffiti within ~~thirty (30)~~ seven (7) days of receipt of written notice.
- (7) Encouraging a paint bank from which community-based groups or individuals may obtain paint and materials needed to remove graffiti, and

encouraging businesses and other potential donors to contribute to the paint bank.

(8) Educating parents and the public that parents are liable for damages caused by their child's graffiti.

(9) Encouraging anti-graffiti education in schools.

(10) Establishing a system for the city to accept assignment of claims from graffiti victims in order to file damage suits against parents and graffiti vandals.

(11) Evaluating annually the effectiveness of this article, and recommending to the council on the possible need to adopt additional measures.

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SECTION 2. If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

SECTION 3. Publication shall be made in the official publication of the City of Corpus Christi as required by the City Charter of the City of Corpus Christi.

SECTION 4. Penalties are as provided in Section 33-105.

SECTION 5. The effective date of this Ordinance shall be September 4, 2007.