

CITY OF HORSESHOE BAY

ORDINANCE NO. ORD 09-07-07

GRAFFITI ORDINANCE

AN ORDINANCE OF THE CITY OF HORSESHOE BAY, TEXAS, PROVIDING FOR FINDINGS OF FACT; DEFINITIONS; POSSESSION OF AEROSOL PAINT AND INDELIBLE MARKERS; DECLARATION OF PUBLIC NUISANCE; PLACEMENT OF GRAFFITI; FAILURE TO REMOVE GRAFFITI; NOTICE AND ABATEMENT BY THE OWNER OR CITY; INFORMAL HEARING; ASSESSMENT OF EXPENSES AND LIEN; ASSISTANCE IN REMOVAL; RESPONSIBILITY OF PARENTS; PROVIDING FOR CIVIL AND CRIMINAL PENALTIES NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500) PER DAY FOR EACH OFFENSE; PROVIDING FOR AN EFFECTIVE DATE; REPEALER; SEVERABILITY; AND PROPER NOTICE AND MEETING

WHEREAS, graffiti constitutes a visual nuisance and a blight upon the City of Horseshoe Bay; and

WHEREAS, the City has full authority under its Home Rule Charter and state law to prohibit and provide for the removal of nuisances; and

WHEREAS, the City finds that the establishment of this graffiti ordinance is in the best interest of the City and its citizens;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

II. REGULATIONS

(a) Definitions

Aerosol Paint means an aerosolized paint product, including, but not limited to, a clear or pigmented lacquer or finish.

Aerosol paint container means any aerosolized or pressurized container that is adapted or made for the purpose of applying paint product, including a clear or pigmented lacquer or chemical coating, or other substances capable of defacing property.

Broad-tipped marker means any indelible marker or similar implement with a writing surface that, at its broadest width, exceeds three-sixteenths of an inch (0.1875”), and which contains ink or other solution that cannot be removed with water after it dries.

Etching equipment means any tool, device, or substance that can be used to make permanent or lasting marks on any natural or man-made surface.

Graffiti means any unauthorized inscription, word, figure, painting, signature, symbol, design, or other marking of any sort which is etched, written, painted, drawn, scratched, engraved or applied in any other way to any surface of public or private property, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property or, despite advance authorization, is otherwise deemed by the City Manager or his designee to be an objectionable, unsightly visual blight to the community.

Graffiti implement means an aerosol paint container, a broad-tipped marker, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

Hate graffiti means any inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to or on any surface which depicts prejudice and/or hate propaganda against persons of another race, religion, disability, age, sexual orientation or gender identity.

Indelible marker means a device that makes a mark with a paint or ink product that is specially formulated to be more difficult to erase, wash out, or remove than ordinary paint or ink products.

Insufficient control means the negligent failure of a parent to exercise the duty to control his or her minor child.

Minor means a person younger than 17 years of age.

Owner means an owner of record or a person who has contractual responsibility for a property.

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 by pressure and leaving a mark of at least one-eighth of an inch (1/8”) in width.

Parent means the natural parent or adoptive parent of a minor. Parent also includes a court-appointed guardian or other person twenty-one (21) years of age or older, authorized by a parent, by a court order, or by the court-appointed guardian to have the care and custody of the minor.

Unauthorized means without the consent of the owner or without authority of law, regulation or ordinance. It shall be rebuttably presumed that the owner did not consent when:

- (1) there is no immediate or obvious evidence of specific authorization by the owner;
- (2) the graffiti is inconsistent with the design and the use of the subject property; or
- (3) the person causing the graffiti was unknown to the owner.

(b) Possession of Aerosol Paint and Indelible Markers

(1) Offense. A minor commits an offense if the minor possesses aerosol paint, an indelible marker, or any other graffiti implement.

(2) Defenses. It is an affirmative defense to prosecution under subsection II(b)(1) that the minor possessed the aerosol paint, indelible marker, or other graffiti implement while the minor was:

- (A) Accompanied or supervised by a parent or guardian;
- (B) Accompanied or supervised by a teacher in connection with a school project;
- (C) Supervised during the minor's regular employment;
- (D) On the property on which the minor lives;
- (E) Engaged in an organized event sponsored or supervised by the city, a school, a church or other officially recognized organization; or
- (F) Traveling to or from the events described in subsection II(b)(2)(E) with an indelible marker.

(c) Declaration of Public Nuisance

The existence of graffiti on public or private property is declared to be an objectionable, unsightly public nuisance and, therefore, subject to the removal and abatement provisions specified in this Ordinance.

(d) Placement of Graffiti

It is an offense for any person to apply graffiti to any natural or man-made surface on any public or private property.

(e) Failure to Remove Graffiti

An owner of property commits an offense if the owner fails to remove graffiti from the owner's property if the graffiti is visible from public or private property other than the property on which the graffiti exists.

(f) Notice and Abatement by Owner or City

(1) Notice of Citation or Abatement. Except as provided in subsection II(f)(9) below, the city must notify the property owner of a violation of this article, and must give the owner the opportunity to remove the graffiti before:

- (A) Issuing a citation for a violation of subsection II(e) above; or

- (B) Entering the property and doing the work necessary to remove or cover the graffiti and abate the nuisance.
- (2) Waiver of Notice. The property owner may waive the right to notice and the opportunity to remove the graffiti by filing a written statement with the City Secretary giving the city permission to enter the property and abate the nuisance at the expense of the owner.
- (3) Method of Notice. Notice must be given:
- (A) In writing personally delivered to the owner; or
 - (B) By letter addressed to the owner's address as listed on the most recent ad valorem tax rolls; or
 - (C) If personal service cannot be obtained or the owner's address is unknown:
 - (i) By publication in the official newspaper at least twice within 10 consecutive calendar days; or
 - (ii) By posting the notice on or near the front door of each structure or building on the property to which the violation relates; or
 - (iii) If the property does not contain any buildings, by posting the notice on a placard or sign attached to a stake driven into the ground on the property to which the violation relates.
- (4) Contents of Notice. The notice shall contain:
- (A) The name and address of the record owner;
 - (B) An identification, which is not required to be a legal description, of the property upon which the violation is located;
 - (C) A statement describing the violation and the work necessary to correct the violation;
 - (D) A statement advising the owner that if the work is not completed within 10 calendar days, the city will complete the work and assess the cost of the work to the owner;
 - (E) A statement that if the city performs the work and the owner fails to pay the cost, a lien may be placed on the property;
 - (F) A statement that, within five calendar days after receiving notice of a violation, the owner may submit a written request to the City Manager or his/her designee for assistance in removing the graffiti;
 - (G) A statement that, within five calendar days after receiving notice of a violation, the owner may submit a written request to the City Manager for an informal hearing before the City Manager or his/her designee to contest whether the violation exists; and

(H) A statement that the city may, at any time, file a criminal misdemeanor complaint in municipal court with a maximum fine of \$500.00 for each calendar day the violation exists, in addition to any other remedy provided by law.

(5) Time of Notice. For purposes of this article, notice is deemed to have occurred:

- (A) For personal service, on the day notice was personally delivered to the owner;
- (B) For mailed notice, three calendar days after written notice was mailed to the owner;
- (C) For notice by publication, on the date that the second notice is published; or
- (D) For notice by posting, the day of posting.

(6) Issuance of Citation. A citation for a violation of subsection II(e) may be issued 10 calendar days after notice of the violation is received.

(7) Work by City. If the owner does not comply with this ordinance by the 10th calendar day after notice is deemed received, the city may enter the property or authorize another to enter the property and do or cause to be done all work necessary to abate the graffiti. If the city performs or causes to be performed the abatement work, the city shall initially pay for the work done, and may, at its sole discretion, charge the expenses to the owner of the property.

(8) Liability for Work. The city shall not be responsible for the color or quality of the paint or any damages done to the owner's property while abating the nuisance on the property.

(9) Immediate temporary abatement by the City. The city shall have the authority to temporarily cover or take down any hate graffiti or highly objectionable graffiti at city expense without first providing notice to the Property Owner. Permanent removal or abatement of such graffiti and related enforcement shall be performed as otherwise set out in this Ordinance.

(h) Informal Hearing

If within five calendar days after receiving notice, the property owner files a written request with the City Secretary according to subsection II(f)(4)(G), the City Manager or his/her designee shall hold an informal hearing. Unless the owner requests and is granted an immediate hearing and waives the right to notice, notice of the time and place of the hearing shall be sent to the owner by certified mail. At the hearing, the owner may provide evidence or testimony that a violation does not exist and abatement is not warranted. After the hearing, the City Manager or his/her designee may determine whether a violation requiring abatement exists. Failure of the property owner to timely request a hearing or to appear at a hearing constitutes a waiver of any right to challenge the abatement of the violation.

(i) Assessment of Expenses; Lien

The city may assess expenses incurred by the city for the abatement of graffiti pursuant to subsection II(f) against the real property on which the work was done. The City is fully authorized to obtain a lien against such property unless the property is a homestead as protected by the Texas

Constitution. To obtain a lien against the property, the city shall file with the county clerk of the county in which the property is located a statement of expenses and a copy of the notice that the city provided to the owner. The lien is security for the expenditures made and interest accruing at the rate of 10 percent per annum on the amount due from the date of payment by the city. The lien is inferior only to tax liens and liens for street improvements.

(j) Assistance in Removal

If an owner is in need of assistance in removing graffiti from the owner's property, the owner may submit a written request for assistance to the City Manager or his/her designee within five calendar days after receiving notice.

(k) Responsibility of Parents

Allowing graffiti. A parent commits an offense if the parent knowingly permits or by insufficient control allows a minor to create graffiti.

(l) Enforcement

(1) The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

(2) Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500). Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a Misdemeanor.

(3) Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law, including, but not limited to the following:

(A) Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance;

(B) A civil penalty up to five hundred dollars (\$500) a day when it is shown that the defendant was actually notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and

(C) Other available relief.

III. EFFECTIVE DATE

This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

