

AN ORDINANCE

AMENDING CHAPTER 21 OF THE CITY CODE TO DELETE SECTION 21-6(C) IN ITS ENTIRETY AND CREATING A NEW ARTICLE X ENTITLED GRAFFITI; ESTABLISH DEFINITIONS FOR GRAFFITI; DECLARE GRAFFITI AS A PUBLIC NUISANCE; PROHIBIT THE POSSESSION OF GRAFFITI IMPLEMENTS IN CERTAIN PLACES AND PROVIDE FOR CRIMINAL PENALTIES; ESTABLISHING A VIOLATION FOR ANY PROPERTY OWNER TO FAIL TO ABATE GRAFFITI AFTER RECEIVING NOTICE; PROVIDE FOR HARDSHIP EXCEPTIONS; PROVIDE FOR THE CITY TO ABATE GRAFFITI ON PRIVATE PROPERTY AND COLLECT FOR THE COSTS OF THE ABATEMENT; AND PROVIDE FOR PUBLICATION.

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WHEREAS, graffiti is an issue of major concern to the San Antonio City Council because the problem impacts every single part of the city; and

WHEREAS, the presence of graffiti on businesses, homes, and privacy fences has increased significantly over the years and the citizens of San Antonio have expressed concerns about properties where graffiti is allowed to remain or where no effort is made by the property owners to remove the graffiti; and

WHEREAS, the San Antonio City Council finds that graffiti encourages vandalism, additional graffiti and other criminal activities; produces urban blight and tends to reduce property values; and

WHEREAS, the placing of graffiti is a violation of the Texas Penal Code; and Chapter 21 of the San Antonio City Code currently prohibits the possession of graffiti implements and provides criminal penalties; and because graffiti is a public nuisance the City would require property owners to remove graffiti and provide enforcement actions for failure to remove graffiti from private property; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Section 21-6(c) of Chapter 21 of the City Code of San Antonio, Texas is hereby deleted in its entirety.

SECTION 2. Chapter 21 of the City Code of San Antonio, Texas is hereby amended by adding language as a new Article X entitled “GRAFFITI”, consisting of the new sections 21-280 to 21-290, as follows:

ARTICLE X. GRAFFITI

Sec. 21-280. Definitions.

For the purposes of this Article, the following definitions shall apply:

Director shall mean the Director of the department designated by the city manager to enforce and administer this Article or the Director's authorized representative.

Graffiti shall mean any unauthorized inscription, word, letter, figure, symbol or design visible from a public place, public right-of-way or another person's property that is marked, etched, scratched, drawn, painted or made in any manner on any surface of tangible property regardless of its content or nature and regardless of the nature of the material of the structural component or property. It shall be a rebuttable presumption that the inscription, word, letter, figure, symbol or design was unauthorized if:

- (a) the graffiti is inconsistent with the design and use of the subject property,
- (b) there is no specific authorization by the owner for the graffiti, or
- (c) the person causing the graffiti was unknown to the owner.

Graffiti implement shall mean any aerosol paint container, any type of felt tip marker, paint stick or etching tool capable of scarring or otherwise defacing glass, metal, concrete or wood.

Guardian shall mean any person to whom custody of a minor has been given by a court order.

Felt tip marker shall mean an indelible marker or similar implement with any size tip.

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

Parent shall mean a person who is the natural or adoptive parent of a person. As used herein, "parent" shall also include a court appointed guardian or other person eighteen (18) years of age or older, authorized by the parent, by a court order, or by the court appointed guardian to have the care and custody of a person.

Property Owner shall include, but not be limited to, any equitable owner, any person having a possessory right to the land or building or the person occupying it, any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, or any person, individual, corporation, association or partnership in apparent or actual control of the property or any agent or employee of any of the foregoing.

Unauthorized shall mean without the specific consent of the owner or without authority of law, regulation or ordinance.

Sec. 21-281. Causing graffiti on property unlawful.

It is a violation of the Texas Penal Code and shall be unlawful for any person to knowingly place or cause to be placed any graffiti upon any surface of public or private buildings, structures or other facilities or upon any natural features of public or private property. Penalty is as provided in the Penal Code section 28.08.

Sec. 21-282. Possession of Graffiti Implements unlawful.

(a) It shall be unlawful for any person to have in his or her possession any graffiti implement in any public park, public or private school ground, public library, public playground, public swimming pool, public recreational facility, any public right-of-way, or any other public grounds or public buildings in the city when any of the above premises are closed to the public.

(b) It shall be unlawful for any person to have in his or her possession, for the purpose of defacing property, any graffiti implement while on private property not open to the public. The graffiti implement shall be presumed to be for the purpose of defacing property if it is in the holder's possession while the holder is on private property closed to the public.

(c) It shall be an offense for the parent or legal guardian of a child under seventeen (17) years of age to intentionally, knowingly, recklessly, or with criminal negligence allow the child to violate the provisions of this Article.

(d) It shall be an affirmative defense to prosecution if the person uses the graffiti implement in their employment or in connection with a school, civic or religious activity or has written permission from the Director or owner of the premises to engage in an authorized activity utilizing the implements.

(e) Violation of any provisions of this section shall be a misdemeanor offense and shall be punishable by a mandatory fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) for the first offense and a mandatory fine of not less than four hundred dollars (\$400.00) nor more than five hundred dollars (\$500.00) for second and subsequent offenses. The court shall have the discretion to provide other means of punishment which may include community service.

Sec. 21-283. Graffiti declared a nuisance.

Any graffiti is hereby declared to be a public nuisance as it:

- (a) Tends to reduce the value of private property;
- (b) Invites vandalism, additional graffiti, and other criminal activities;
- (c) Produces urban blight; and
- (d) Is detrimental to the safety and welfare of the public; ~~and~~.

Sec. 21-284. Failure to remove graffiti.

(a) It shall be unlawful for any property owner to fail to abate or cause the abatement of graffiti from his or her property after receiving notice of the nuisance and being given an opportunity to effect the abatement within the time allowed by this Article.

(b) The time period in which an owner shall abate or cause to be abated a graffiti nuisance shall be ten (10) days, but may be extended at the sole discretion of the Director.

Sec. 21-285. Notice.

(a) Whenever the Director has probable cause to believe graffiti has been placed upon any private property, the Director shall notify the owner of the presence of the nuisance and shall provide a ten (10) day time period for the owner to abate the nuisance.

(b) Notice under this Article shall be given:

- (1) Personally in writing; or
- (2) By letter addressed to the owner's post office address; 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 graffiti relates, if the property contains no buildings.

(c) Notice under this Article shall contain:

- (1) An identification, which is not required to be a legal description, of the property;
- (2) A description of the location of the graffiti on the property;
- (3) The time period in which the owner must abate the nuisance;
- (4) A statement that the owner must abate the graffiti nuisance within such time period;
- (5) A statement that the owner may request a hearing within 10 days;
- (6) A statement that should the owner fail to abate the situation within the stated time period, the city may cause the correction and abatement work to be done on its own and shall charge the owner for the expenses involved, and upon failure of the owner to pay the city for such expense, fix a lien on the lot or parcel for the expense involved;
- (7) A statement that if the owner demonstrates a hardship as defined in 21-288, the Director shall cause the graffiti to be abated without cost to the owner, and no lien shall be placed on the homestead property.

(d) Notice under this Article shall be deemed to have been received:

- (1) For personal service, as of the date the notice was given personally to the owner; or
- (2) For mailed notice, the date the notice is mailed; or
- (3) For notice by posting, ten (10) days after notice was posted on the property or structure.

Sec. 21-286. Hearing.

The owner of a lot or parcel subject to abatement under this Article may request a hearing by notifying the Director within ten 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 ten days prior thereto. At the hearing, the owner and the Director may present any evidence relevant to the proceedings. If the hearing official finds that conditions constituting a nuisance hereunder exist, the hearing official shall issue an order so stating.

Sec. 21-287. Paint provided.

An owner who demonstrates to the Director that his structure has been subjected to graffiti shall be provided sufficient paint materials to cover the graffiti on the structure on the property. The materials will typically be from donated sources or bulk purchases and the paint may not match the existing background surface color. The owner shall have ten business days following receipt of the paint materials to abate the graffiti.

Sec. 21-288. Hardships.

(a) Each notice given under section 21-285 of this Code shall advise of the availability of the relief under this section. Applications for relief under this section shall be submitted to the Director in such form and with such proofs of ownership, income, disabilities, repeat occurrences and related factors as may be required to determine whether the applicant is entitled to assistance within ten days following the date the city mails or delivers the notices under section 21-285 of this Code.

(b) In addition to the relief authorized in section 21-287 of this Code, if the owner demonstrates that none of the family members residing in a homestead that is the subject of a graffiti notice is able to apply the paint because of age, physical disabilities, dependent care obligations or other limitations beyond their reasonable control, then the Director shall cause the graffiti to be abated without cost to the owner, and no lien shall be placed on the homestead property. The operation of this subsection is limited to any single family residential property that is occupied as a homestead by a 'very low income family' defined as a family whose annual income does not exceed 50 percent of the median income for the area (adjusted for family size).

(c) Without regard to the eligibility standards described in subsection (b) above, the Director shall cause the graffiti to be abated without cost to the owner if an owner demonstrates that the property for which notice of graffiti has been issued has been the subject of at least two prior graffiti incidents (evidenced by either notices provided pursuant to this Article or bona fide police reports) during the preceding 180 days, that the owner complied with the requirements of this Article by abating the prior graffiti within ten business days of the date of the applicable notice or police report and that the city has abated the property no more than twice in a calendar year.

Sec. 21-289. Abatement by city; payment of costs by owner; imposition of lien.

(a) If an owner fails to abate a graffiti nuisance during the time allowed for abatement and/or fails to respond to the notice of the nuisance, the Director may order abatement of the nuisance to be done at the owner's expense. This remedy shall be in addition to any other remedy available to the city.

(b) Persons authorized by the Director to abate the nuisance may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.

(c) Whenever the city shall abate a graffiti nuisance as provided by this Article, the Director shall have the option of selecting a private contractor to abate the nuisance.

(d) The city shall assess to the owner a charge for all work done to abate the graffiti nuisance, including an administrative expense of one hundred fifty dollars (\$150.00), and cause the expense thereof to be assessed on the property upon which such expense is incurred.

(e) A statement of the costs incurred by the city to abate the nuisance shall be mailed to the owner, if the owner and mailing address is known, and, if not known, may be published in a newspaper of general circulation in the city. The statement shall demand payment within thirty (30) days from the date of receipt or publication.

(f) If such statement has not been paid within such period, the city manager or other official designated by the city manager 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 of ten (10) percent 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.

SECTION 3. All other provisions of Chapter 21 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

SECTION 4. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 5. The City Clerk is directed to promptly publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

SECTION 6. The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 7. This ordinance shall be effective on _____, 2007 but no sooner than the ____ day after publication.

PASSED AND APPROVED this ___ day of _____, 2007

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney