

ORDINANCE NO. O-2009-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS", ARTICLE VI, "MISCELLANEOUS OFFENSES", AND CHAPTER 18 RELATING TO GRAFFITI BY REVISING CITY DEPARTMENT AUTHORIZED TO REMOVE GRAFFITI; ADDING PROVISIONS MAKING PROPERTY OWNERS RESPONSIBLE FOR THE ABATEMENT AND REMOVAL OF GRAFFITI FROM THEIR RESPECTIVE PROPERTY; AMENDING SOLID WASTE DIRECTOR'S AUTHORITY TO ENFORCE CODE ENFORCEMENT ORDINANCES BY EXTENDING TIMEFRAME OF AUTHORITY; ADDING PROVISIONS FOR RIGHT-OF-ENTRY ON PREMISES TO INSPECT; PROVIDING NOTICE AND HEARING PROCEDURES; AMENDING PROVISIONS RELATED TO ENFORCEMENT; AND MOVING THESE PROVISIONS TO A NEWLY AMENDED CHAPTER 18 "CODE ENFORCEMENT"; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code provide the City authority to adopt ordinances for the good government, peace, order, and welfare of the municipality; and

WHEREAS, Texas Local Government Code Section 54.004 provides that a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and

WHEREAS, Texas Local Government Code Section 217.042 (a) and (b) provide that a municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits, and that a municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance; and

WHEREAS, City Code Section 4-100.a prohibits the creation, without lawful authority, of graffiti on any tangible property within the City limits, and declares such graffiti a public nuisance; and

WHEREAS, the creation of graffiti is prohibited by state laws and such laws already allow for the victims of such crimes to recover the costs for repairing the damaged property through the criminal justice system in the form of restitution and through the civil courts by filing a private cause of action; and

WHEREAS, the City Council finds that unless the City acts to cause the removal of graffiti from property by making property owners responsible for the abatement and/or removal the graffiti, such graffiti tends to remain, causing other properties and entire neighborhoods to be affected and become less desirable places in which to be, all to the detriment of the City and the public welfare; and

WHEREAS, additional enforcement tools, such as requiring owners to abate or remove graffiti, are required to protect public and private property from a continuing degradation due to the acts of vandalism and the remainder of graffiti on such property; and

WHEREAS, The Code Enforcement Department is the appropriate department for enforcement activities related to the removal and/or abatement of graffiti with in the City; and

WHEREAS, it is necessary to remove the temporary time periods on the Solid Waste Director's authority to enforce Tyler ordinances currently being enforced by the Development Services, Environmental, Neighborhood Services, Planning & Zoning, and Engineering & Streets departments, and to provide for a right-of-entry for inspection of property to ensure compliance with such ordinances; and

WHEREAS, it will be more convenient to consolidate several regulations involving code enforcement into a newly amended and renamed Chapter 18,

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

PART 1: That Chapter 4, "Offenses and Miscellaneous Provisions", Article VI, "Miscellaneous Offenses" is hereby amended by amending Section 4-99 to read as follows:

Sec. 4-99. Responsibility of Parent or Guardian for Graffiti Created by a Minor.

a. In this section:

Aerosol paint means an aerosolized paint product, including a clear or pigmented lacquer or finish.

Graffiti means any marking, including but not limited to, any inscription, slogan drawing, painting, scratching, symbol, logo, name, character, or figure, that is made in any manner on tangible property.

Guardian means a person who, under court order, is the guardian of the person of a minor, or a public or private agency with whom a minor has been placed by a court.

Minor means any person less than 17 years of age.

Owner means any owner of record, person who has contractual responsibility for the property, or any person with the legal right of possession to tangible property. There shall be a rebuttable presumption in prosecutions under this Article that the person who is listed on the tax records for the county wherein the property is situated is the owner. There shall be a rebuttable presumption in prosecutions under this Article that the person currently named on the account for utility services furnished by the City is a person who has the legal right of possession of the property and is an owner.

Parent means a person who is a natural parent, adoptive parent, or step-parent of another person.

b. It is unlawful for a parent or guardian of a minor to, with knowledge, permit, or by insufficient control, allow, the minor to create graffiti on tangible property in the City without the property owner's consent.

c. It is unlawful for a minor to with knowledge possess aerosol paint of any sort or character. It is a defense to prosecution under this subsection that, at the time of possession, the minor was accompanied or supervised by a parent or guardian, a teacher in connection with a bona fide school project or a supervisor during the minor's regular employment, that the possession occurred at the minor's residence, or that the possession occurred as part of an organized event sponsored or supervised by the City, a school, church or other officially recognized entity. (Ord. 0-98-27, 3/25/98)(Ord. No. 0-98-52, 6/24/98) (Ord. No. 0-2009-16, 2/25/09)

PART 2: That Chapter 4, "Offenses and Miscellaneous Provisions", Article VI, "Miscellaneous Offenses" is hereby amended by amending Sections 4-100 to read as follows:

Sec. 4-100. Graffiti-Declared a nuisance; Penalty; Abatement.

a. The creation of graffiti on any tangible property in the City limits, without lawful authority, is declared a public nuisance, is unlawful and is subject to the penalties set forth in State law.

b. The Code Enforcement Department, Peace Officers and Public Service Officers of the Tyler Police Department, or other persons designated by the Solid Waste Director City are authorized to remove and obliterate graffiti appearing on any part of any public street, sidewalk, pavement or curbstone, and it is unlawful to interfere with such action by any City employee or authorized person. (Ord. 0-98-27, 3/25/98)(Ord. No. 0-98-52, 6/24/98) (Ord. No. 0-2000-20, 3/22/00)

c. A person commits an offense if the person is the owner of property within the City or Extraterritorial Jurisdiction of the City and the owner knowingly fails to paint over or remove the graffiti from the property within ten (10) days after the notice of the presence of graffiti on the owner's property has been deemed to have been received in accordance with this section.

d. Employees of the Code Enforcement Department, Peace Officers and Public Service Officers of the Tyler Police Department, or other persons designated by the Solid Waste Director are authorized to enforce the provisions of this Section.

1. Whenever a violation of this Article occurs within the extraterritorial jurisdiction of the City, five thousand (5,000) feet of the City limits, the Solid Waste Director shall have discretion as to whether inspection and/or enforcement shall occur.

2. Whenever graffiti, as defined herein, exists on property within the City limits or its extraterritorial jurisdiction, the Code Enforcement Department employee or other authorized persons shall make or cause to be made an inspection. In making any inspection under this Section the Code Enforcement Department employee or other authorized persons may enter, examine, take photographs, and survey tangible property having suspected graffiti violations.

e. City may seek enforcement action by first giving the notice set forth in this Section, and then by initiating all appropriate legal means, including any or all of the following:

1. Abatement proceedings by the City and the assessment of expenses and fees for corrective work performed by the City;

2. Enforcement in Municipal Court by the filing of a criminal action; and/or

3. Filing civil actions in courts of appropriate jurisdiction to seek compliance with the provisions of this Section.

f. Notice.

1. The property owner shall be given written notice to remove the graffiti from the property. The notice shall contain:

(a) the date and a brief description of the graffiti violation;

(b) the physical location of the violation by street address, lot and block number;

(c) the name of owner, if known;

(d) a statement that the owner is required to paint over or remove graffiti from the property within 10 days after said notice is deemed received by the owner;

(e) A statement that the owner's consent to removal by the City will be presumed unless the owner notifies the City otherwise by providing written notice to the Code Enforcement Department within ten (10) days of the date notice is deemed received by the owner; and

(f) A statement that if the graffiti has not been painted over or removed within ten (10) days following the date the notice is deemed received by the owner or the owner fails to notify the Code Enforcement Department in writing of refusal to allow City to abate or remove graffiti within ten (10) days following the date the notice is deemed received by the owner, the City may, without further notice, issue citations for violations of this Section, and/or enter upon the property by its agent or its contractors, remove the graffiti, and assess charges of the costs incurred to the owner.

2. The notice shall be provided to the owner either:

(a) By personal service;

(b) By certified mail with return receipt requested addressed to the property owner at the address recorded in the records of Smith County Appraisal District;

(c) By delivery by Federal Express Postal Service using signature confirmation service;

(d) By posting the notice on or near the front door of each building on the property to which the violation relates, if personal service or notice by mail in accordance with this Section cannot be obtained, or the owner's address is unknown; or

(e) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if personal service or notice by mail in accordance with this Section cannot be obtained, or the owner's address is unknown.

g. Notice deemed received by the owner- Presumption. There shall be a rebuttable presumption under this Article that Notice is deemed received by the owner:

(a) On the date that the notice was given personally to the owner;

(b) On the date that United States Postal Service return receipt or Federal Express Postal Service return receipt shows owner's signature, when such notice was mailed in accordance with this section;

(c) On the date the United States Postal Service return receipt shows the notice was "refused" or "unclaimed", when such notice was mailed in accordance with this section, or

(d) On the fifth (5th) day after notice was posted, when the City posts a notice in accordance with this Section;

h. An owner's consent to removal by the City will be presumed unless the owner notifies the City otherwise by providing written notice within ten (10) days of the date notice is deemed received by the owner of the owner's refusal to allow abatement or removal by the City

i. City Abatement or Removal Process. Code Enforcement Department employees or other authorized persons shall implement graffiti abatement or removal efforts:

1. On or after the eleventh (11th) day following the date notice to abate or remove graffiti is deemed received by the property owner, provided owner has not notified City of refusal to allow abatement/removal; or

2. On or after receipt of written consent of the property owner. Following abatement/removal efforts, the Code Enforcement Department shall provide a statement of costs and fees to the owner demanding payment within 30 days of receipt of the statement. A fifty (\$50.00) dollar administrative processing fee may be assessed to the cost of abatement/removal of the graffiti. The City may also assess additional charges for actual costs incurred during extraordinary abatement efforts.

j. 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 owners Representative. (Ord. No. 0-2009-16, 2/25/09)

PART 3: That Chapter 4, "Offenses and Miscellaneous Provisions", Article VII., "Code Enforcement" is hereby amended by amending Sections 4-110 to read as follows:

Sec. 4-110. Code Enforcement.

The Director of Solid Waste, Code Enforcement Department Code Officers, Peace Officers and Public Service Officers of the Tyler Police Department and other City employees as designated in writing by the Solid Waste Director are authorized to enforce Tyler ordinances currently being enforced by the Development Services, Environmental, Neighborhood Services, Planning & Zoning, and Engineering & Streets departments, to issue municipal court citations for violations of those ordinances, and to make any inspection, enter, examine, take photographs,


post notices, and survey any premises to verify compliance with any of those ordinances. Whenever a violation of this Article occurs on City owned property outside the City limits but within the extraterritorial jurisdiction of the City, the Director of Solid Waste shall have discretion as to whether or not inspection and/or enforcement action shall be taken by their respective employees. (Ord. 0-2007-12, 1/24/07) (0-2007-103, 9/12/07) (Ord. No. 0-2009-16, 2/25/09)

PART 5: That Chapter 18 "Streets" be amended and renamed to be Chapter 18, "Code Enforcement" and that Code sections 4-99, 4-100, and 4-110 as amended above be renumbered to become part of newly amended Chapter 18 as new sections 18-2, 18-3, and 18-4 respectively.

PART 4: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 5: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall be published in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be February 27, 2009.

PASSED AND APPROVED this the 25th day of February, 2009.


BARBARA BASS, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK



The seal is circular with a double border. The outer border contains the text "CITY OF TYLER" at the top and "TEXAS" at the bottom. The inner border contains the text "CITY CLERK" at the top and "SEAL" at the bottom. In the center of the seal are three stylized ovals.

APPROVED:


MARY C LANDERS
CITY ATTORNEY