

# CITY OF VON ORMY, TEXAS

ORDINANCE NO: 2010-44

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AN ORDINANCE ESTABLISHING GRAFFITI AS A NUISANCE; AMENDING THE CODE OF ORDINANCES OF THE CITY OF VON ORMY, TEXAS; AND PROVIDING A PENALTY FOR THE VIOLATION OF SUCH ORDINANCE AS A MISDEMEANOR PUNISHABLE PURSUANT WITH THE TEXAS HEALTH AND SAFETY CODE SECTION 485, SUBCHAPTERS B-D.

**WHEREAS**, the City Council of Von Ormy, Texas is enacting this Ordinance to help in the prevention of the spreading of graffiti vandalism and to establish a program for the removal of graffiti from public and private property; and

**WHEREAS**, the Texas Local Government Code, Section 51.001 (Vernon 2008) authorizes any city incorporated under the general laws of the State of Texas to ordain and establish ordinances as shall be needful for the good of government, peace and order of the municipality that are necessary or proper for carrying out a power granted by law to the Municipality or to an officer or department of the Municipality; and

**WHEREAS**, the Texas Local Government Code, Section 54.004 authorizes Von Ormy, Texas, a Home Rule municipality, to enact and enforce this Ordinance, to protect the health, life, and property of the municipality and its inhabitants, which also includes defining and declaring what constitutes a nuisance and abate in any manner any nuisance that may injure or affect the public health or comfort of their municipality; and

**WHEREAS**, the Texas Health & Safety Code, Section 485, *et. seq.* authorizes a political subdivision to impose restrictions, in accordance with this statute, on the access and retail display of spray paint cans, wide-tipped markers and other graffiti implementation devices to protect the health and welfare of the citizens and prevent theft; and

**WHEREAS**, the Von Ormy City Council finds that graffiti is a public nuisance and is destructive of the rights and values of property owners as well as 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 affected and become less desirable places in which to be, all to the detriment of the City; and

**WHEREAS**, the Von Ormy City Council intends, through the adoption of this Ordinance, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The Council does not intend for this Ordinance to conflict with any existing anti-graffiti state laws; and

**WHEREAS**, the City of Von Ormy is a Home Rule Municipality organized under the laws of the State of Texas;

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

SECTION 1. Definitions.

Graffiti means any unauthorized inscription, word, figure, painting 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 by any graffiti implementation, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, regardless of the content or nature of the material that has been applied to any wall, building, fence, sign or other structure or surface and is visible from any public property or right-of-way or is visible from the private property of another person.

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

SECTION 2. Prohibited Acts.

2.1. Defacement. It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any city-owned property or, without the permission of the owner or occupant, on any non-city-owned property.

2.2. Possession of Graffiti Implements.

2.2.1 By Minors at or Near School Facilities. It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provisions of this Section shall not apply to the possession of broad-tipped markers or other graffiti implements by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class or extra curricular activity at the school or at public facility within the City that formally requires the possession of broad-tipped markers or other graffiti implement. The burden of proof in any prosecution for violation of this Section shall be upon the minor student to establish the need to possess a broad-tipped marker or other graffiti implement.

2.2.2 In Designated Public Places. It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the City or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the City.

SECTION 3. Accessibility to Graffiti Implementation Devices.

3.1 Furnishing to Minors Prohibited. It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any aerosol paint container, broad-tipped marker, or paint stick to any person under the age of eighteen (18) years without the written consent of the parents or guardian of the person. The provisions of this Section shall not apply to the possession of broad-tipped markers or other graffiti implements by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class or extra curricular activity with their school.

3.2. Permit. Any business establishment selling graffiti implementation devices shall comply with the permitting requirements of Texas Health & Safety Code Section 485, Subchapter B.

3.3. Display and Storage.

3.3.1 Every person who owns, conducts, operates, or manages a retail commercial establishment selling aerosol paint containers, paint sticks, or broad-tipped markers shall store the containers, sticks or markers in an area continuously observable, from a place that is in the line of sight of a cashier or in the line of sight from a workstation, through direct visual observation or surveillance equipment, by employees of the retail establishment during the regular course of business normally continuously occupied during business hours;

3.3.2 In the event that a commercial retail establishment is unable to store the aerosol paint containers, paint sticks, or broad-tipped markers in an area as provided above, the establishment shall store the containers, sticks, and markers in an area not accessible to the public in the regular course of business without employee assistance.

3.4. Signage. In accordance with Texas Health and Safety Code Section 485.017, any business establishment that sells an abusable volatile chemical at retail shall display a conspicuous sign, in English and Spanish, which states the following:

“It is unlawful for a person to sell or deliver an abusable volatile chemical to a person under 18 years of age. Except in limited situations, such an

offense is a state jail felony. It is also unlawful for a person to abuse a volatile chemical by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use a volatile chemical in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor.”

#### SECTION 4. Penalties.

4.1 Any violations of this Ordinance by a business establishment shall subject to penalties in accordance with Texas Health & Safety Code Section 485.019 and the penalties of the City of Von Ormy for violations of Ordinances.

4.2 Any violations of this Ordinance are subject to the criminal and administrative penalties in accordance with Texas Health & Safety Code Section 485, Subchapters C and D and the penalties of the City of Von Ormy for violations of Ordinances.

#### SECTION 5. Graffiti As Nuisance.

5.1 The existence of graffiti on public or private property in violation of this Ordinance is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Ordinance.

5.2 It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti.

#### SECTION 6. Removal of Graffiti.

6.1 Removal by the Perpetrator. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this Ordinance. Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.

6.2 Property Owner Responsibility and Right of the City to Remove. If graffiti is not removed by the perpetrator according to the Section above, graffiti shall be removed pursuant to the following provisions:

6.2.1. A property owner of private property shall have the duty to remove the graffiti after notice by the City. Notice may be given to a

6.4 Exceptions to Property Owner Responsibility. The removal requirements above shall not apply if the property owner or responsible party can demonstrate that:

6.4.1. The property owner or responsible party lacks the financial ability to remove the defacing graffiti; or

6.4.2 The graffiti is located on a transportation infrastructure; and

6.4.3 The removal of the graffiti would create a hazard for the person performing the removal.

6.5 Right of City to Enter Property for Removal.

6.5.1 Use of Public Funds. Whenever the City becomes aware of a property owner refusal to remove graffiti and the City provides notice and determines that graffiti is located on a publicly or privately owned property viewable from a public or quasi-public place, the City shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any other extensive area other than where the graffiti is located, unless the City Manager, or the designee of the City Manager, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

6.5.2. Right of Entry on Private Property. Prior to entering upon private property or property owned by a public entity, other than the City, for the purpose of graffiti removal, the City shall attempt to secure the consent of the property owner or responsible party and also obtain a release from the property owner or responsible party for the City from any liability for property damage or personal injury. If the property owner or responsible party refuses to allow the City to remove the offending graffiti after an offer to abate the graffiti for no charge or the property owner fails to remove the graffiti within the time specified by this Ordinance after notice is given, and/or the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the terms of this Section, the City has the authority to commence abatement and cost recovery proceedings for the graffiti removal from the property owner or responsible party.

property owner only upon the City offering to remove the graffiti free of charge and the property owner has refused the offer.

6.2.2. If a property owner refuses removal, the property owner must remove the graffiti on or before the 15<sup>th</sup> day after the date they receive notice from the City. If the property owner fails to remove the graffiti on or before the 15<sup>th</sup> day after receipt of notice, the City may remove the graffiti or paint over the graffiti and charge the property owner the expenses for such removal in accordance with the fee schedule adopted by the City. Such removal shall be done in a manner prescribed by the City Marshal as authorized by the City Council. The City shall ensure there is no damage to the property during the removal of the graffiti.

6.2.3 If either the private property owner or the City removes or paints over the graffiti, the paint shall match the existing paint color or a color most similar to the existing paint color on the area with the graffiti so as not to appear inconsistent and patchy.

6.3 Notice. The notice by the City to the property owner shall contain the following information and be served in the following manner:

6.3.1. Notice given in writing personally to the property owner and letter sent by certified mail, addressed to the property owner at the address in the records of the appraisal district where the property is located. If service cannot be accomplished in this manner, the City must serve the property owner by publication at least once in a newspaper of general circulation in the municipality, posting notice on or near the front door of the building and property to be abated or posting notice on a placard to a stake driven into the ground on the property to be abated;

6.3.2. The notice must include the street address and legal description of the property sufficient for identification of the property;

6.3.3. A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding; and

6.3.4 A statement that the graffiti must be removed within fifteen (15) days after receipt of the notice and that if the graffiti is not abated within that time the City will declare the property to be a public nuisance, subject abatement procedures and fees as designated by the City.

SECTION 7. Expenses and Lien.

7.1 The City may assess expenses incurred under Subsection 6.2.2 of this Ordinance against the property on which the work is performed to remove the graffiti. The City may also obtain a lien against the property for expenses incurred under Subsection 6.2.2. In order to obtain a lien, the City must file a statement of expenses with the county clerk. The statement of expenses must contain:

- (1) the name of the property owner, if known;
- (2) the legal description of the property; and
- (3) the amount of expenses incurred under Subsection 6.2.2.

7.2 A lien described by the terms in section 7.1 attaches to the property on the date on which the statement of expenses is filed in the real property records of the county in which the property is located and is subordinate to:

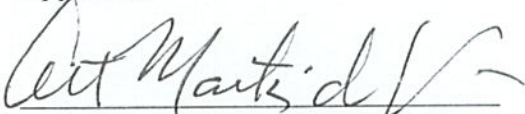
- (1) any previously recorded lien; and
- (2) the rights of a purchaser or lender for value who acquires an interest in the property subject to the lien before the statement of expenses is filed as described by section 7.1.

SECTION 8. Effective Date. This Ordinance shall take effect immediately upon its passage, approval and official publication as provided by law.

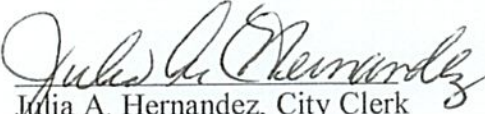
SECTION 9. Severability. If any section, provision, subdivision, clause or part of this ordinance shall be adjudged or held unconstitutional or invalid, it shall not affect the validity of this ordinance as a whole or any other part or provision contained herein.

PASSED AND APPROVED this the 7th day of July, 2010.

Approved:

  
Art Martinez de Vara, Mayor

Attest:

  
Julia A. Hernandez, City Clerk