

ORDINANCE NO. 2014-13

AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AMENDING FLAGSTAFF CITY CODE TITLE 6, *POLICE REGULATIONS*, CHAPTER 6-01, *GENERAL OFFENSES*, BY ADDING A NEW SECTION 6-01-001-0004, *GRAFFITI PROHIBITED*; AND AMENDING TITLE 7, *HEALTH AND SANITATION*, BY ADDING A NEW CHAPTER 7-01, *GRAFFITI ABATEMENT*

RECITALS:

WHEREAS, the incidents of graffiti on businesses, homes and fences has increased significantly over the years and the citizens of Flagstaff have expressed concern that the continued presence of such visual symbols of disorder erodes community spirit and cohesion as well as adversely impacts the overall attractiveness of their neighborhoods; and

WHEREAS, reducing incidents of graffiti requires a comprehensive strategy that includes increased efforts to apprehend and hold accountable those responsible for such vandalism as well as the prompt removal of graffiti; and

WHEREAS, the City and many private property owners commit substantial financial and human resources to diligently remove graffiti within a reasonable amount of time, and the City supports the efforts of community and business members who work to promptly eradicate graffiti from their communities; and

WHEREAS, these combined private and public efforts can be undermined by property owners who fail to cooperate in removing graffiti from their property; and

WHEREAS, the City Council finds and determines that graffiti is a demoralizing visual symbol detrimental to the safety and welfare of the public; tends to reduce the value of private property; invites vandalism, additional graffiti and other criminal activities; allows gangs to communicate threats; and produces urban blight which is adverse to the maintenance and continuing development of the City; and

WHEREAS, the City Council intends, through the adoption of this ordinance, to provide the Flagstaff Police Department with additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement as well providing code enforcement personnel with those tools necessary for compelling property owners to remove graffiti within a reasonable amount of time or, in the alternate, for the removal of graffiti by City staff or volunteers within a reasonable amount of time.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That Title 6, Police Regulation, Chapter 6-01, General Offenses, is hereby amended by adding the following section:

Section 6-01-001-0004 GRAFFITI PROHIBITED

- A. No person may write, paint, draw, etch or otherwise apply any inscription, figure, or mark of any type on any public or private building or other real or personal property, owned, operated, or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm, or corporation, unless the express permission of the owner or operator of the property has been obtained.
- B. No person may possess an aerosol spray paint container, broad-tipped indelible marker, solidified paint marker or etching implement or solution with the intent to violate the provisions of Subsection A.
- C. No person may possess an aerosol spray paint container, broad-tipped indelible marker, solidified paint marker or etching solution on any private property unless the owner, agent, manager, or other person having control of the property consented to the presence of the aerosol spray paint container, broad-tipped indelible marker, solidified paint marker or etching solution.
- D. A person convicted of a violation of this section is guilty of a class 1 misdemeanor. In addition to any other punishment that may be imposed, the Court shall order restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense, or to any person or entity including a political subdivision that has incurred expense to repair or abate such damage or loss to the victim's property, in an amount to be determined by the Court.

SECTION 2. That Title 7, Health and Sanitation, is hereby amended by adding the following chapter:

Chapter 7-01 GRAFFITI ABATEMENT**Section 7-01-001-0001. PURPOSE AND INTENT**

- A. It is the purpose and intent of this section to provide a procedure for the removal of graffiti from walls, structures, or surfaces on public and private property in order to reduce blight and deterioration within the City, and to protect the public health and safety. For purposes of this chapter, "graffiti" means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted, or otherwise applied to property and that unnecessarily and substantially mars or visually impairs any surface upon the property, without permission from the property owner without the prior authorization of the owner of the property regardless of the graffiti content, or nature of the material used in the commission of the act, or the material of the property. There is a rebuttable presumption that the graffiti, as herein defined, was marked, etched, scratched, drawn, painted or otherwise applied to the property without permission from the property owner.
- B. The City finds and determines that graffiti is obnoxious, contributes to neighborhood deterioration, provides a communication system for gangs and other vandals, damages property, and constitutes a public nuisance. Further, the City finds that graffiti must be abated as quickly as possible in order to avoid its detrimental impacts on the City and its residents, and to prevent the spread of additional graffiti.

Section 7-01-001-0002 GRAFFITI PROHIBITED

All sidewalks, walls, buildings, fences, signs, utility structures, and other structures or surfaces shall be kept free from graffiti when the graffiti is visible from the street or other public or quasi-public property. For the purposes of this chapter, "quasi-public property" means any private street, highway, lane, alley or other roadway which is open to the public or to which the public is invited, and shall in this context include any and all parking lots, alleys, plazas, or similar public spaces generally open to the public.

Section 7-01-001-0003 GRAFFITI REMOVAL

- A. Removal by the Perpetrator. Any person applying graffiti on public or private property shall have the duty to remove the graffiti within 24 hours after notice by the City or private owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of Police, the Director of the Department of Public Works, or any additional City department head, as authorized by the City Manager. 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.
- B. Property Owner Responsibility. If graffiti is not removed by the perpetrator according to Subsection A, above, or if the perpetrator is unknown, graffiti shall be removed pursuant to the following provisions:

It is unlawful for any person who is the owner or who has primary responsibility for control of property or for repair or maintenance of property in the City to permit property that is defaced with graffiti to remain defaced for a period of 5 calendar days after actual notice (i.e. notice provided directly in person, by telephone, or by e-mail), or service by first class mail of notice of the defacement. The notice shall contain the following information:

1. The street address and legal description of the property sufficient for identification of the property; and
2. A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding; and
3. A statement that the graffiti must be removed within 5 calendar 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 to the abatement procedures in City Code Chapter 7-01, Graffiti Removal; and
4. A statement that in the event the owner or responsible party fails to abate the graffiti within the time period specified in the notice of violation, the City may abate the graffiti and bill the owner or responsible party for the costs thereof; and
5. An information sheet identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors; and
6. A statement that the notice of violation may be appealed, as provided in Section 7-01-001-0004.

The property owner or responsible party has an active maintenance program that includes graffiti removal and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of 10 days after service by first class mail of notice of the defacement.

Section 7-01-001-0004 NOTICE OF VIOLATION HEARING

- A. Any owner or responsible party aggrieved by the determination of the City in the notice of violation may appeal that determination to the City Manager within 5 calendar days of receipt. Notwithstanding any other provisions of this Code, there shall be a non-refundable fee of \$250 for any appeal pursuant to this subsection. Such fee must accompany any such appeal and no such appeal shall be considered filed or received until such fee is paid in full.
- B. Notice. The City Manager, or his or her designee, serving as the Hearing Officer, shall provide the property owner of record and the party responsible for the maintenance of the property, if a person different from the owner, not less than 48 hours notice of the City's intent to hold a notice of violation hearing at which the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance. Notice shall be served in the same manner as a summons in a civil action in accordance Flagstaff City Code Section 1-15-001-0011, Civil Enforcement Procedures.
- C. Determination of Hearing Officer. The determination of the Hearing Officer after the notice of violation hearing shall be final and not appealable. If, after the hearing, the Hearing Officer determines that the property contains graffiti viewable from a public or quasi-public place, the Hearing Officer shall give written notice in an eradication order that, unless the graffiti is removed within 5 calendar days, the City shall enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the Hearing Officer), or such other eradication thereof as the Hearing Officer determines appropriate, and shall provide the owner and the responsible party thereafter with an accounting of the costs of the eradication effort on a full cost recovery basis.
- D. Eradication Effort. Not sooner than the time specified in the order of the Hearing Officer, the City Manager, or the designee of the City Manager, shall implement the eradication order and shall provide an accounting to the owner and the responsible party of the costs thereof.

Section 7-01-001-0005 LIEN

As to such property where the responsible party is the property owner, if all or any portion of the assessed charges for the eradication of graffiti remain unpaid after 30 days, the portion thereof that remains unpaid shall constitute a lien on the property that was the subject of the eradication effort.

Section 7-01-001-0006 RIGHT OF CITY TO REMOVE

In the event that the owner or responsible party fails to abate the graffiti as required by the notice of violation, or fails to appeal the notice of violation within 5 calendar days of service, the City may proceed to abate the graffiti, and bill the owner or responsible party for the costs

thereof. Pursuant to Section 7-01-001-0005, Lien, the City may place a lien on the subject property for the actual cost of graffiti removal plus 10 percent of actual cost for administrative overhead thereof. The City or its authorized private contractor is expressly authorized to enter private property and abate graffiti thereon in accordance with this section. The Flagstaff Police Department shall assist in the enforcement of this Chapter.

SECTION 3. Should any sentence, paragraph, section, subsection, division, subdivision, clause or phrase of this ordinance be adjudged to be unconstitutional, illegal or invalid, the same shall not affect the validity of the document as a whole, or any part or provision thereof other than that part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of this ordinance as a whole.

SECTION 4. That the City Clerk be authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary; and that the City Clerk be authorized to make formatting changes needed for purposes of clarity and form, if required, to be consistent with Flagstaff City Code.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY