

ORDINANCE NO. 1143

**AN ORDINANCE OF THE CITY OF RAYMONDIVLLE, TEXAS, DECLARING GRAFFITI A PUBLIC NUISANCE; PROVIDING DEFINITIONS; PROVIDING FOR THE OFFENSES OF DEFACEMENT AND POSSESSION OF GRAFFITI IMPLEMENTS BY MINORS; PROHIBITING THE POSSESSION OF GRAFFITI IMPLEMENTS BY ANY PERSON WHILE IN OR ON ANY PUBLIC FACILITY, PARK, PLAYGROUND, RECREATION FACILITY, SCHOOL, OR OTHER PUBLIC BUILDING OR STRUCTURE OWNED BY THE CITY OR A SCHOOL DISTRICT OR WHILE WITHIN FIFTY FEET (50') OF AN UNDERPASS, BRIDGE ABUTMENT, STORM DRAIN, OR SIMILAR TYPE OF INFRASTRUCTURE; PROVIDING FOR A FINE OF NOT LESS THAN \$200.00 NOR MORE THAN \$500.00 FOR EACH OFFENSE UNDER THIS ORDINANCE; PROVIDING THAT PARENTS OF MINORS SHALL BE JOINTLY AND SEVERALLY LIABLE WITH THE MINOR FOR ANY PAYMENT OF ALL FINES; PROVIDING FOR COURT ORDERED RESTITUTION TO THE VICTIM; PROVIDING THAT PARENTS OF MINORS SHALL BE JOINTLY AND SEVERALLY LIABLE WITH THE MINOR FOR ANY RESTITUTION ORDERED BY THE COURT; PROVIDING FOR COMMUNITY SERVICE IN LIEU OF ALL OR PART OF THE FINES AT THE DESCRETION OF THE COURT; REQUIRING THE PERPETRATOR TO REMOVE THE GRAFFITI WITHIN TWENTY-FOUR (24) HOURS AFTER NOTICE BY THE CITY OR PRIVATE OWNER OF THE PROPERTY INVOLVED; PROVIDING FOR REMOVAL OF GRAFFITI BY THE PROPERTY OWNER AND/OR THE CITY; PROVIDING FOR LIENS ON PROPERTY WHERE CITY PROVIDES THE ABATEMENT; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION OF THE CAPTION; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Board of Commissioners of the City of Raymondville, Texas, finds that graffiti is a public nuisance and destructive to the rights and values of property owners and the entire community; and,

**WHEREAS**, the Board of Commissioners further finds that unless the City or private property owner 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 infected and become less desirable places in which to live and support families; and,

**WHEREAS**, the Board of Commissioners further finds that the existing law is inadequate to combat graffiti in the City, this Ordinance is intended to provide additional enforcement tools to protect public and private property from graffiti, and shall not be construed to conflict with existing state laws; and,

**WHEREAS**, the Board of Commissioners further finds that the property owners must take responsibility for removal of graffiti on their property;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF RAYMONDIVLLE:**

**SECTION 1. Nuisance Declared.**

Graffiti which is located in any place where it is visible from a public right-of-way is detrimental to the safety and general welfare of the general public, tending to reduce the value of private property, to invite vandalism and other criminal offenses, creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the City by producing urban blight which is adverse to the maintenance and continuing development of the City, and is therefore declared to be a public nuisance.

**SECTION 2. Definitions**

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Aerosol paint container* means any aerosol container that is adapted or made for the purpose of applying spray paint or any other substances capable of defacing property.

*Aerosol paint container tips* means any device used to insert upon an aerosol paint container to create various graffiti designs of various configurations.

*Consent* means assent in fact, expressed or apparent, by the owner of real property or a person legally authorized to act for the owner.

*Felt tip marker* means any felt tip marker or similar implement with a flat or angled writing surface that, at its broadest width, is three-eighths of one inch or greater, containing ink whether water soluble or not.

*Graffiti* means any inscription, work, letter, figure, painting, drawing, mark or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved or otherwise affixed to any surface of public or private property without advance consent of the owner, or is otherwise deemed a public nuisance.

*Graffiti implements* means any aerosol paint container, aerosol paint container tips, paint gun, paint ball gun, felt tip marker, paint stick or graffiti stick, brush, or etching tool or etching device or any other device that facilitates or is capable of scarring, marking or otherwise defacing glass, metal, concrete, wood or any other surface.

*Minor* means any person under seventeen (17) years of age.

*Owner* means any person who has title to the real property or a legal right to control the property, including the owner's authorized representative.

*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, and upon application, leaving a visible mark.

*Parent* means any person having legal custody of a minor, such as:

- (1) A natural parent, adoptive parent or step-parent;
- (2) A legal guardian;
- (3) A person who stands in loco parentis; or
- (4) A person to whom legal custody has been given by order of a court.

*Person* means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

*Vandalism* means deliberate, willful destruction of or damage to public or private property.

*Graffiti Abatement* means either:

- (1) Removal of graffiti through chemical or abrasive means, or:
- (2) Concealment of graffiti with paint or other materials so that it is no longer visible.

### **SECTION 3. Offenses**

#### **Defacement.**

(a) *Applying graffiti.* It shall be unlawful for any person to apply graffiti to public or private property without the permission of the owner. This provision is intended to supplement and not conflict with the penal code provision on criminal mischief.

(b) *Applicator's failure to remove graffiti.* A person who applies graffiti commits an offense every day the person fails to remove the graffiti and restore the property to its original condition.

(c) *Parental duty.* A parent of a minor commits an offense if he or she knowingly permits, or by insufficient control allows, the minor to apply graffiti to public or private property, or to deface or vandalize public or private property.

#### **Possession of graffiti implement.**

(a) *Minor's possession of graffiti implement.* A minor commits an offense if the minor possesses a graffiti implement on public or private property. It shall be a defense to prosecution that the graffiti implement was possessed with the advance

consent of the property's owner. It shall be a further defense to prosecution that the graffiti implement was possessed in a place where it was going to be used in a non-graffiti activity, such as employment, school, church, art or other activity, or enroute to or from such place. The burden of proof to establish this defense for a violation of this section shall be upon the minor to establish that such graffiti implement was going to be used in a non-graffiti activity.

(b) *Possession of graffiti implement in public places.* A person commits an offense if he or she possesses a graffiti implement in any publicly-owned building, facility, park, school ground, playground, swimming pool, right-of-way, or other public building or structure owned or operated by the City or Raymondville Independent School District, or while in or within fifty feet (50') of an underpass, bridge, abutment, storm drain, canal, or similar type of infrastructure. It shall be a defense to prosecution that the person's presence in the prohibited area was with the advance consent of the owner.

#### **Penalties.**

(a) *Fines.* An offence under this Ordinance is punishable by a fine of not less than \$200.00 or more than \$500.00.

(1) In the case of a minor, the parents shall be jointly and severally liable with the minor for the payment of all fines.

(2) Upon application and finding of indigence, the court in lieu of ordering a fine, shall instead order the minor and parents to jointly perform community service work.

(b) *Restitution.* In addition to any punishment specified in this Ordinance, the court may order any violator to make restitution to the victim for the damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case of a minor, the parents shall be ordered jointly and severally liable with the minor to make the restitution.

(c) *Community service.* In lieu of or a part of the penalties specified in this section, a minor or adult may be required to perform community service as described by the court, based on the following requirements.

(1) The minor or adult shall perform at least thirty (30) hours of community service.

(2) At least one parent of the minor shall be in attendance at a minimum of fifty percent (50%) of the period of assigned community service.

- (3) Reasonable efforts shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect in the minor or adult, including community service that involves graffiti removal.

#### **SECTION 4. Removal by perpetrator.**

Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (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 City Manager (or the designee of the City Manager) or the private property owner. Any person applying graffiti shall be responsible for the removal or 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. It is a separate violation for each twenty-four (24) hour period after notice a person fails to remove the graffiti. Where graffiti is applied by a minor, the parents shall be responsible for such removal or for the payment of the removal.

#### **SECTION 5. Removal of graffiti by property owner; city removal of graffiti upon failure of property owner to do so; notice required.**

(a) *Property owner's failure to remove graffiti.* A person commits an offense if the person is the owner of the real property and knowingly fails to remove and fails to consent to the removal of graffiti from the property, including an appurtenances, within seven (7) days of receipt of written notice provided by the City in accordance with subsection (b) of this section when the graffiti is visible from:

- (1) A public place;
- (2) Public right-of-way; or,
- (3) Another person's real property.

(b) *Notice of violation and right to due process hearing.* The City must notify the real property owner in writing that the owner's property appears to have graffiti and inform the owner that the owner's consent to removal by the city will be presumed unless the owner notifies the City otherwise within seven (7) days of the notice and requests a hearing in accordance with subsection (c). Notice under this section shall be given:

- (1) Personally in writing to the owner; or
- (2) By U.S. mail addressed to the owner's address or P.O. Box; 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 violation relates, if the property contains no buildings.

(c) *Hearing process.* The owner of real property subject to abatement under this article refusing consent to removal may request a hearing by notifying the City within seven (7) 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 Ordinance. Unless notice is waived by the owner, the owner shall be provided written notice of the time and place of the hearing at least seven (7) days prior thereto. At the hearing, the owner and the City may present any evidence relevant to the proceedings. If the hearing official finds that the conditions constituting a nuisance exist, the hearing official shall issue an order so stating and that, unless the graffiti is removed within forty-eight (48) hours, the City shall enter upon the property, abate the graffiti, and provide the owner with a statement of the costs of the abatement effort on a full cost recovery basis. The determination of the hearing official after the hearing shall be final and not appealable.

(d) *Eradication effort.* Not sooner than the forty-eight (48) hour time limit specified in the order of the hearing official, if the graffiti has not been abated, the City Manager, or the City Manager's designee, shall implement the abatement order and shall provide a statement of costs to the owner demanding payment of the actual associated abatement costs within thirty (30) days of receipt, in addition to a fifty dollar (\$50.00) administrative processing fee. The city may also assess additional charges for actual costs incurred during extraordinary abatement efforts.

(e) *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 owner's representative.

(f) *Liens.* If any invoice or statement of costs has not been paid within the specified time period, the City Manager, or the City Manager's designee, 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 allowed by law 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 section shall not be the City's sole remedy.

(g) Any monetary amounts collected or monetary donations received under this article are designated within the general fund to be used for activities consistent with graffiti eradication.

**SECTION 6. *Savings clause.***

If any provision, section, subsection, sentence, claims or phrases of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City of Raymondville in adopting this Ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reason of unconstitutionality or invalidity of any other portion or provision.

**SECTION 7. *Publication of caption.***

The City Manager of the City is hereby authorized and directed to cause a true and correct copy of the caption of this Ordinance to be published in a newspaper having general circulation in the City of Raymondville, Texas.

**SECTION 8. *Effective date.***

This Ordinance shall be effective as of the date the caption is published as provided in Section 7.

**PASSED, APPROVED AND ADOPTED on one reading by the Board of Commissioners of the City of Raymondville, Texas, this the \_\_\_\_ day of \_\_\_\_\_, 2010.**

**CITY OF RAYMONDVILLE, TEXAS**

**BY: \_\_\_\_\_  
Orlando Correa, Mayor**

**ATTEST:**

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**Eleazar Gracia, Jr., City Secretary**