

ORDINANCE 12-02-04

AN ORDINANCE OF THE CITY OF ENNIS, TEXAS, AUTHORIZING THE ABATEMENT OF UNAUTHORIZED VISUAL BLIGHT (GRAFFITI); PROVIDING A DECLARATION; PROVIDING FOR DEFINITIONS; PROVIDING FOR OFFENSES; PROVIDING FOR GRAFFITI REMOVAL; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City Commission of the City of Ennis, Texas hereby finds and determines that visual blight (graffiti) is a public nuisance, contributes to the deterioration of neighborhoods, provides a communication system for gangs and other vandals, damages property and must be abated to avoid the detrimental impact of such graffiti on the city and its residents, to disrupt the communication system for gangs and other vandals, and to prevent further spread of such graffiti.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ENNIS, TEXAS:

That the Code of Ordinances of the City of Ennis, Texas, is hereby amended by adding a provision authorizing the abatement of unauthorized visual blight (graffiti):

Section 1. - Definitions.

The following terms, when used in this article, shall have the meaning ascribed to them in this section:

Graffiti means markings, initials, slogans, inscriptions, symbols, designs or other drawings which are written, sketched, painted, drawn or applied in any other way to any structure, building, or property, or to any portion or element thereof, whether the property is public or private, without the effective consent of the owner.

Graffiti implement means any device capable of being used to affix or apply graffiti, and includes but is not limited to aerosol paint containers, felt tip markers, paint sticks, etching tools, paint sticks, graffiti sticks, or other devices.

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

Minor means any person under the age of 18.

Owner means the registered or titled owner of property, a lessee or tenant of the property, or a person who has control over or the legal right of supervision or possession of the property. In the case of a corporation or partnership, "owner" includes an officer, partner, or manager of the entity.

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 by pressure, and upon application, leaving a visible mark, and that is not water soluble.

Parent means a natural parent, adoptive parent, or step-parent of a minor.

Section 2. - Offenses.

(a) It shall be unlawful for any person to knowingly apply or affix graffiti to any public or private real or personal property.

(b) A person commits an offense if the person knowingly possesses a graffiti implement with intent to affix or apply graffiti.

(c) A parent or guardian of a minor commits an offense if he or she knowingly permits or by insufficient control allows the minor to affix or apply graffiti to public or private real or personal property.

(d) An owner of private real or personal property commits an offense if the owner fails to remove graffiti applied or affixed to the real or personal property by the 15th day after service of notice.

Section 3. - Notice; lien.

(a) In the event the owner of real property situated within the territorial limits of the city shall fail to remove graffiti, the city manager or designee shall send notice by certified mail to such owner addressed to said owner at the property owner's address as contained in the records of the appraisal district in which the property is located, or by giving the notice personally to the owner. If service cannot be obtained by either of these means, notice may be given by posting said notice on or near the front door of each building on the property to which the notice relates, by posting the notice on a placard attached to a stake driven into the ground on the property to which the notice relates, or by one-time publication in the city's official newspaper. Such notice shall generally describe the location of the graffiti and direct that the graffiti shall be removed within 15 calendar days from the delivery, posting or publication of the notice.

(b) The notice to remove the graffiti must offer to remove the graffiti from the owner's property free of charge. A failure by the property owner to remove the graffiti or to accept the city's offer within 15 days after service of notice shall be deemed a refusal of the offer. If the offer is accepted, the city manager or designee may remove graffiti by any practical means that minimizes damage to the property, including but not limited to painting over the graffiti.

(c) In the event the owner of the property fails to remove the graffiti within the 15-day period specified in the notice, the city shall have the authority to enter upon private property and abate or cause to be abated the graffiti and assess the owner and the property for the costs thereof.

(d) The city shall send to the owner a statement of expenses showing the costs. If the owner fails to pay or otherwise reimburse the city for such costs within 30 days, the city may file a lien against the property by filing a sworn statement of expense with the county clerk of the county in which the property is situated that contains: the name of the property owner, if known; the legal description of the property; and, the amount of expenses incurred by the city in abating the graffiti.

(e) A property owner shall be exempt from the requirements of this section if the graffiti is located on transportation infrastructure and the removal of the graffiti would create a hazard for the person performing the removal.

(f) The city may bring suit for foreclosure in the name of the city to recover the expenditures and interest due at the rate of ten percent per annum accruing of and from the date that the costs are incurred by the city. The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the city in doing the work. The failure of the owner to receive the notice or statement of expenses shall not be a defense in any such suit.

(g) The remedy provided by this section is in addition to any other remedies provided by this article or other law, all such remedies being cumulative and nonexclusive.

Section 4. – Penalties

That any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances, as amended hereby shall be subject to a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense, and every day such violation is continued shall be deemed to constitute a separate offense.

Section 5. - Severability

If any section, article paragraph, sentence, clause, phrase or word in this ordinance, or application thereto any persons or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Commission hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6. – Repeal of Conflicting Ordinances

That all provisions of the Ordinances of the City of Ennis, Texas, in conflict with the provisions of this ordinance be, and the same are hereby amended, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 7.- Effective Date

This Ordinance shall become effective from and after its date of passage in accordance with law.

PASSED AND APPROVED on First reading this the ____ day of January, 2012

PASSED AND APPROVED on Second reading this the ____ day of February, 2012.

RUSSELL R. THOMAS, Mayor
City of Ennis, Texas

ATTEST:

SHIRLEY TRULL,
City Secretary