

ORDINANCE NO.: 2002-060

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter ___

BE IT ORDAINED by the Mayor and Council this 7th day of August, 2002 that the 1998 Code of Ordinances of The City of Columbia, South Carolina is amended to read as follows:

Section 1 Purpose and intent.

The City Council of the City of Columbia, South Carolina is enacting this ordinance to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property.

The Council finds that graffiti is a public nuisance and 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 less desirable places in which to be, all to the detriment of the City.

The 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.

For the purposes of this Ordinance, the following words shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) *Graffiti* means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, glued or engraved on or otherwise affixed to any surface of public or private property by any means whatsoever to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.

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

Section 2 Prohibited acts.

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

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Section 3 Penalties.

(a) Fines and Imprisonment. Any person violating this Ordinance shall be punished by a fine up to five hundred dollars (\$500.00), or by imprisonment for a term not to exceed thirty (30) days, or by both fine and imprisonment at the discretion of the court.

(b) Restitution. In addition to any punishment specified in this section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court.

(d) Community Service. In lieu of, or as part of, the penalties specified in this section, a minor or adult may be required to perform community service.

Reasonable effort 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 on the minor or adult, including community service that involves graffiti removal.

Section 4 Rewards and Reimbursements for Information.

(a) The City may offer a reward in an amount to be established by resolution of the City Council for information leading to the identification and apprehension of any person who willfully damages or destroys any public or private property by the use of graffiti. In the event of multiple contributions of information, the reward amount shall be divided by the City in the manner it shall deem appropriate.

(b) Claims for rewards under this section shall be filed with the City in the manner specified by the City Council.

(c) No claim for a reward shall be allowed unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.

Section 5 Graffiti as Nuisance.

(a) 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.

(b) 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 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 Chief of Police, the Director of the Department of Public Works, or any additional City department head, as authorized by the City Council. 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.

Section 7 Removal of Graffiti by Property Owner or City.

If graffiti is not removed by the perpetrator according to Section 6, graffiti shall be removed pursuant to the following provisions:

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(a) Property Owner Responsibility. 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 ten (10) days after 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;

(2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;

(3) A statement that the graffiti must be removed within ten (10) 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.

(4) An information sheet identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors.

(b) Exceptions to Property Owner Responsibility. The removal requirements of subsection (a) above shall not apply if the property owner or responsible party can demonstrate that:

(1) The property owner or responsible party lacks the financial ability to remove the defacing graffiti or is actively engaged in actions to remove the graffiti; or,

(2) The property owner or responsible party has an active program for the removal of graffiti 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

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fifteen (15) days after service by first class mail of notice of the defacement.

(c) Right of City to Remove.

(1) Use of Public Funds. Whenever the City becomes aware or is notified and determines that graffiti is located on 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 more extensive an area than that where the graffiti is located, unless the City Manager, or other 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.

(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 a release of the City from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this ordinance, or if the City has requested consent to remove or paint over the offending graffiti and 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 shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

(d) Abatement and Cost Recovery Proceedings.

(1) Notice of Due Process Hearing. The City Manager, or the designee of the City Manager, 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 than the owner, not less than forty-eight (48) hours notice of the City's intent to hold a due process 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 with the South Carolina Rules of Civil Procedure. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation.

(2) Determination of Hearing Officer. The determination of the Hearing Officer after the due process hearing shall be final and not appealable. If, after the due process hearing, regardless of the attendance of the owner or the responsibility party or their respective agents, 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,

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unless the graffiti is removed within ten (10) 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 deems 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.

(3) 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.

(4) Cost Hearing. The owner or responsible party may request a cost hearing before the hearing officer on the eradication accounting, and appropriate due process must be extended to the owner or responsible party. If following the cost hearing, or if no hearing is requested, after the implementation of the eradication order, the Hearing Officer determines that all or a portion of the costs are appropriately chargeable to the eradication effort, the total amount set forth in the eradication accounting, or an amount thereof determined as appropriate by the Hearing Officer, shall be due and payable by the owner or responsible party within thirty (30) days. Any amount of eradication charges assessed by the Hearing Officer that are less than the total amount set forth in the eradication accounting shall be explained by written letter from the Hearing Officer to the City Council.

Section 8 Ease of Removal Provisions.

(a) Common Utility Colors and Paint-type. Any gas, electric, telephone, water, sewer, cable, telephone and other utility operating in the City shall paint its above-surface metal fixtures with a uniform paint type and color that meets with the approval of the City Manager.

(b) Condition encroachment Permits. All encroachment permits issued by the City shall, among such other things, be conditions on:

(1) The permittee's application of an anti-graffiti material to the encroaching object of a type and nature that is acceptable to the City Manager, or the City Manager's designee.

(2) The permittee's immediate removal of any graffiti;

(3) The City's right to remove graffiti or to paint the encroaching object; or,

(4) The permittee's providing the City with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object containing graffiti.

Section 9 Prevention provisions.

(a) Design of Potential Graffiti-Attracting Surfaces. Any applicant for design review approval, conditional use permit, special use permit, development agreement, or other form of development or building permit shall, to the extent deemed feasible by the City Manager, or the designee of the City Manager, have designed any building structures visible from any public or quasi-public place in such a manner to consider prevention of graffiti, including, but not limited to the following:

- (1) Use of a protective coating to provide for the effective and expeditious removal of graffiti;
- (2) Use of additional lighting;
- (3) Use of non-solid fencing;
- (4) Use of landscaping designed to cover large expansive walls such as ivy or similar clinging vegetation; or,

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Section 10 Exempt Property.

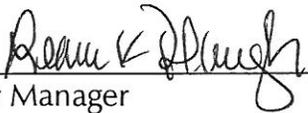
The provisions of this ordinance shall not apply to property zoned or used for single family residential purposes.

This ordinance is effective as of the date of enactment.

Requested by:


MAYOR

Approved by:


City Manager

Approved as to form:


City Attorney

ATTEST:


City Clerk

Introduced: _____

Final Reading: _____