

ORDINANCE NO. 124

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UHLAND, TEXAS,
PROHIBITING THE ACT OF GRAFFITI; DEFINING
AND ESTABLISHING PENALTIES FOR THE
VIOLATION THEREOF; PROVIDING A SAVINGS CLAUSE;
PROVIDING FOR THE REPEAL OF ANY CONFLICTING
PROVISIONS; PROVIDING FOR PUBLICATION; AND PROVIDING
AN EFFECTIVE DATE**

RECITALS:

Whereas The City of Umland recognizes that graffiti that is visible from a public place, public right-of-way, or the property of others is detrimental to the safety and welfare of the public, invites vandalism, additional graffiti, and other criminal activities, tends to reduce the value of private property, and produces property blight adverse to the maintenance and continuing development of the City of Umland. The City of Umland desires to prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property; and

Whereas The City Council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. 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 Pursuant to Chapter 217 of the Texas Local Government Code, the City has the authority to regulate nuisances and disorderly behavior; and

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

Therefore For the reasons stated above, the City Council finds and determines that the adoption of this ordinance is in the interest of the safety and welfare of the public.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF UHLAND, TEXAS:

Sec. 1 Definitions.

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

Graffiti shall mean a drawing or the inscribing of a message, slogan, sign or symbol or mark of any type that is made on any public or private building, structure or surface, and that is made without permission of the owner.

Guardian shall mean any person to whom custody of a minor has been given by a court order.

Owner shall include, but not be limited to, any equitable owner, any person having a possessory right to the land or building or the person occupying it, any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, or any person, individual, corporation, or partnership in apparent control of the property or any agent or employee of any of the foregoing.

Parent shall mean a person who is the natural or adoptive parent of a person. As used herein, the term "parent" shall also include a court appointed guardian or other person 18 years of age or older, authorized by the parent, by a court order, or by the court appointed guardian to have the care and custody of a person.

Minor Child shall mean a person over the age of 4 years old and under the age of 18 years old.

Sec. 2 Offenses

(a) It shall be unlawful for any person to apply or allow to apply graffiti to any structure, whether public or private, within the city limits of the City of Umland

(b) It shall be unlawful for any parent or guardian to allow minor children to apply graffiti to any structure, whether private or public, within the City Limits of the City of Umland

Sec. 3 Parents/Guardians Responsibility

(a) In the event that a minor child is caught in the act of graffiti, the parent or guardian of said minor shall be held responsible for the action of said minor, including but not limited to any fines, fees, civil or criminal actions or any other recourse allowed by state and local laws and ordinances.

Sec. 4 Defenses.

It shall be an affirmative defense to prosecution under sections 2 (a) and (b) if the person uses the graffiti implement in their employment or in connection with a school, civic, or religious activity or has written permission from the director or owner of the premises to engage in an authorized activity.

Sec. 5 Inspection of Premises

The Code Enforcement Officer may inspect or cause to be inspected any property that is, or for which the Officer has probable cause to believe is in violation of this Ordinance. In order to perform inspections of private properties reasonably suspected of being in violation of this Article but which is not in plain view, the Officer is authorized to seek a search warrant from any judge of competent jurisdiction.

Sec. 6 Remediation Required

(a) It shall be the duty of the violator to abate or pay to abate said violations of this Ordinance; if said violator is a minor child then said duty falls to violator's parent or guardian.

(b) if the violator cannot be located then the duty to abate will then be the responsibility of the owner of the structure.

Sec. 7 Notice

(a) In the event that the person shall fail to comply with the requirements of remediation of this Article, notice of such violation shall be given prior to exercising the authority granted in this Article.

(b) Such notice shall be given:

- (1) Personally to the owner in writing;
- (2) By letter addressed to the owner at the owner's address as recorded in the appraisal district's records; or

(3) If personal service cannot be obtained, notice may be given by:

- (A) By publication at least once;
- (B) Posting the notice on or near the front door of each building on the property to which the violation relates; or
- (C) 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.

(4) if a municipality mails a notice to a property owner in accordance with subsection (b) and the United States Postal Service returns the notice as "refused" or "unclaimed" or something similar, the validity of the notice is not affected, and the notice is considered as delivered.

(c) Annual Notice: After a property owner has been given one (1) notice of violation on a lot, tract, or parcel of land, annual notice may be given to the property owner. If the City opts to provide Annual Notice, such notice shall be mailed to the owner at the address recorded with the appraisal district and posted on the property. Once the City has given such annual notice, no further notice shall be required prior to abatement for that lot, tract, or parcel of land for a one (1) year period. If the City does not receive notice in a change of ownership, the City may abate any nuisance contained on the property covered by this Article without further notice and assess expenses to the owner.

(d) Contents of Notice: The notice of violation shall at a minimum contain the following:

- (1) The name of the owner, if known, of the premises proposed to be entered upon by the City;
- (2) The address or legal description of the premises proposed to be entered upon by the City;
- (3) The offending conditions existing on the lot, tract or parcel of land;
- (4) A statement that the recipient has seven (7) days from the date of notice to correct the violation, that if he/she fails to do so, the City will enter the premises and remedy the same, and that the City is entitled to attach a lien to the property to secure payment for services rendered; and
- (5) A statement that the recipient is entitled to a hearing.

(e) If annual notice is given, it shall state, in addition to the foregoing, that the City may enter upon the premises to remedy any violation at thirty (30) day intervals????? during the year.

(f) Owner Requested Work: In the event the owner of any such property requests that the City do such work as is necessary in order to abate or prevent a violation of this Article, then such request will negate the requirement for notification of violation by the City, and the City will have the same remedies as hereinafter set forth.

(g) Exception: Notwithstanding the foregoing provisions, the City may abate, without prior notice, any weeds that have grown to a height of forty-eight (48) inches and are an immediate danger to health, life, or safety of any person. In the event that the City abates weeds pursuant to this subsection, the requirements set forth in the Texas Health and Safety Code for such abatement shall govern.

Sec. 8 Abatement, Expenses, and Lien

(a) Abatement: If the owner of any lot, tract, parcel of land or portion thereof does not comply with the provisions of this Article within seven (7) days of receipt of Notice of Violation, the City or its Agents may:

- (1) Enter upon such premises and do such work as necessary, or cause the same to be done, in order that the premises may comply with the requirements set forth in this Article; and
- (2) Pay for the work or improvements made and charge the expenses to the owner of the property.

(b) Assessment of Expenses and Lien

- (1) The City Administrator or his/her designee may assess expenses incurred by the City in exercising the Authority granted in this Section. The City attorney, or an assigned representative, may file a statement with the County Clerk of Caldwell or Hays County of such expenses including administrative, filing and publication costs incurred in abating the unsanitary condition on said premises (e.g., graffiti). The lien statement must state the name of the owner, if known, and a legal description of the property. The City shall have a privileged lien on such lot, tract, or parcel of land, second only to tax liens and liens for street improvements, for the expenses incurred, together with interest at the rate of Ten Percent (10%) per year on the amount due from the date the City paid or incurred such expenses. For any such expenditures and interests, suit may be instituted and recovery and foreclosure had in the name of the City, and the statement of expenses or a certified copy thereof shall be *prima facie* proof of the amount expended in any such work performed by the City.
- (2) The Code Enforcement Officer shall execute and file a release of lien for the subject property with the County Clerk of Caldwell or Hays within a reasonable time after payment of the amount due on the property including interest through the date of payment

- (c) Hearing: Any person or entity receiving an abatement notice under this Article shall have a right to meet with the code enforcement officer or his designee within ten (10) days of receipt of such notice to assert any legal defense as to why the City should not proceed with the abatement and attachment of a lien as provided in this Article.

Sec. 9 ENFORCEMENT

- (a) Civil and Criminal Penalties: The City shall have the power to administer and enforce the provisions of this Article as may be required by governing law. Any person violating any provisions of this Article is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Article is hereby declared to be a nuisance.

(b) Criminal Prosecution: It shall be an offense to violate any provisions of this Article. Any person violating any provisions of this Article shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00) per occurrence. Each day that a provision of this Article is violated shall constitute a distinct and separate offense. An offense under this Article is a misdemeanor.

(c) Civil Remedies: Nothing in this Article shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Article and to seek remedies as allowed by law, including but not limited to the following:

- (1) Injunctive relief to prevent specific conduct that violates the Article or to require specific conduct that is necessary for compliance with the Article;
- (2) a civil penalty up to one thousand dollars (\$1,000.00) per day when it is shown that the defendant was actually notified of the provisions of this Article and after receiving said notice committed acts in violation of the Article or failed to take action necessary for compliance with this Article; and
- (3) Other available relief.

Sec. 10 REPEALER

All ordinances or parts of ordinances in force when the provisions of this Article become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

Sec. 11 SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

Sec.12 PROPER NOTICE AND MEETING

It is hereby official found determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Local Government Code.

Sec. 13 PUBLICATION

The City Council hereby directs the City Secretary to publish the caption of this Ordinance in compliance with the requirements of the Texas Local Government Code.

Sec.14 EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its adoption and it is accordingly so ordained.

Approved this the 25 day of July 2012.



Russell Shultz, Mayor

Attest: 

Karen Gallaher, City Secretary