

AN ORDINANCE

enacting a new Article XI, Graffiti Abatement, of Chapter 9, Building of the Joplin City Code, dealing generally with the prevention of graffiti vandalism from public and private property.

WHEREAS, the Council of the City of Joplin, 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 to be, all to the detriment of the City; and,

WHEREAS, 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.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That Chapter 9, Buildings, of the Joplin City Code, be amended by the enactment of a new Article XI, Graffiti Abatement, to read as follows:

"Article XI. Graffiti Abatement.

Sec. 9-270. Definitions.

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

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

(b) *Broad-tipped marker* means any felt tip indelible marker or similar implement with a flat or angled writing surface that,

at its broadest width, is greater than one-fourth (1/4th) of an inch, containing ink or other pigmented liquid that is not water soluble.

(c) *Etching equipment* means any tool, device, or substance that can be used to make permanent marks on any natural or man-made surface.

(d) *Graffiti* means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, 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 Chief Building Inspector.

(e) *Graffiti implement* means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

(f) *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 leaving a mark of at least one-eighth (1/8th) of an inch in width.

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

Sec. 9-271. Prohibited Acts.

(a) Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any city-owned property or non-city-owned property.

(b) Possession of Graffiti Implements.

(1) By Minors at or Near School Facilities. It shall be

unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior oral or written consent of the owner or occupant of such private property. The provisions of this Section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers.

(2) In Designated Public Places. It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the City or while in or within fifty feet (50') of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the City.

Sec. 9-272. Penalties.

(a) Fines and Imprisonment. Any person violating this Ordinance shall be punished by a fine of Two Hundred Fifty Dollars (\$250.00) for the first offense; Five Hundred Dollars (\$500.00) for the second offense; or by imprisonment in the City jail for a term not to exceed sixty (60) 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 may 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. In the case of a minor, the parents or legal guardian may be ordered jointly and severely liable to make the restitution.

(c) 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 as prescribed by the court.

(d) Removal of Graffiti by Perpetrator.

Any person convicted of applying graffiti on public or private property shall have the duty to remove the graffiti, if so ordered by the Court. Such removal shall be done in a manner prescribed by the Chief Building Inspector.

Sec. 9-273. 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.

Sec.9-274. Removal of Graffiti by Property Owner or City.

If graffiti is not removed by the perpetrator according to Section 9-272, graffiti shall be removed pursuant to the following provisions:

(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, subject to the abatement procedures of this Code; and

(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

(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 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 Chief Building Inspector 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 may 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 Chief Building Inspector, 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 of the City Code. 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 published in the area in which the property is located pursuant to of the City Code.

(2) Determination of Hearing Officer. If, after the due process hearing, regardless of the attendance of the Owner or the responsible 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, 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 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.

(3) Eradication Effort. Not sooner than the time specified in the Order of the Hearing Officer, the City 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.

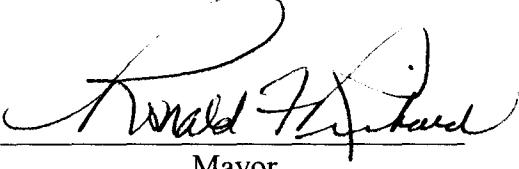
(5) Lien. As to such property where the responsible party is the property owner, if all or any portion of the assessed eradication charges remain unpaid after thirty (30) days, the portion thereof that remains unpaid shall constitute a lien on the property that was the subject of the eradication effort. The Director of Public Works shall certify the cost of same to the Director of Finance, who shall issue a Special Tax Bill against the property in question."

Section 2. Severability is intended throughout and within the provisions of the Ordinance. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 18th

Council Bill No. 97-043 (Continued)

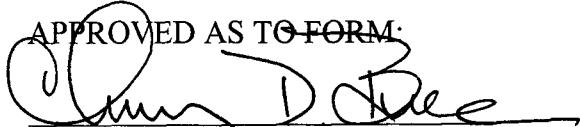
day of August, 1997.


Arnold H. Richard
Mayor

ATTEST:


Barbara L. Hogelin
Acting City Clerk

EFFECTIVE 20 DAYS FROM DATE


Oliver D. Ree
City Attorney

APPROVED AS TO FORM: