

ORDINANCE NO. 29-2009

AN ORDINANCE AMENDING CHAPTER 19, "NUISANCES AND ILLEGAL DUMPING", AND CHAPTER 20, "OFFENSES", OF THE ABILENE CITY CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW, PROVIDING A SEVERABILITY CLAUSE; AND CALLING A PUBLIC HEARING.

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

PART 1: That Chapter 19, "Nuisances and Illegal Dumping", and Chapter 20 "Offenses", of the Abilene City Code be amended as set out in Exhibit "A", attached hereto and made a part of this Ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PASSED ON FIRST READING this 13th day of August, A.D., 2009.

After said passage on first reading, a notice of time and place, where and when said ordinance would be given a public hearing and considered for second and final passage, was published in the Abilene Reporter News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 9th day of August, 2009, the same being more than twenty-four (24) hours prior to the time designated for said hearing. After such opportunity for the public to be heard, said ordinance was passed on second and final reading.

PASSED ON SECOND AND FINAL READING this 27th day of August, A.D., 2009.

ATTEST:


City Secretary


Mayor

APPROVED:

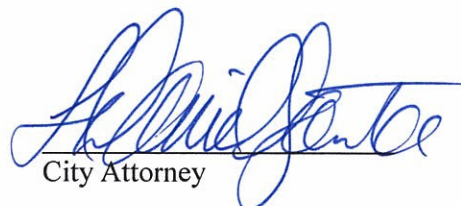

City Attorney

EXHIBIT A

CHAPTER 19, NUISANCES AND ILLEGAL DUMPING, is amended as set forth below:

ARTICLE I. IN GENERAL

Sec. 19-3. Definitions.

DELETE AS INDICATED BY STRIKETHROUGH:

~~*Graffiti.* Any unauthorized inscription, word, signature, symbol, design or other marking of any sort that is etched, written, painted, drawn, or applied in any other way to any structure, building, tree, vehicle, or property of any sort or to any portion or element thereof, whether the property is public or private.~~

ARTICLE II. PROHIBITIONS

Sec. 19-15. Prohibited acts or conditions which constitute a nuisance.

DELETE AS INDICATED BY STRIKETHROUGH:

~~(13) Graffiti that is visible from public view or any private property other than that on which the same exists.~~

ARTICLE III. NUISANCE ENFORCEMENT

Sec. 19-33. Exceptions to notice and enforcement provisions.

DELETE AS INDICATED BY STRIKETHROUGH AND RELETTER REMAINING:

~~(a) *Graffiti.* Whenever graffiti is found to exist the owner will have thirty (30) days after notice under this article to remove all graffiti from the property that is visible from the public view or from private property other than that on which the same exists.~~

~~(b)~~ (a) *High grasses, weeds or brush.* When any violation of high grasses, weeds or brush is found to exist, a notice by letter as allowed under this article will be addressed to the owner of the property in question. If the address of the property owner is unknown, then notice may be given by publication one (1) time in a local, daily newspaper of general circulation. The property owner will have ten (10) days from the date of the notice to correct the violation. Annual notice may be given to the property owner anytime during the calendar year and no

further notices shall be required for a period of one (1) year from the date of the notice.

~~(e)~~ (b) *High grasses, weeds or brush in excess of forty-eight (48) inches.* In the event that high grasses, weeds or brush is higher than forty-eight (48) inches the city may go upon the property found in violation of this article and abate such violation without notice to the property owner. No later than the tenth day after the city causes the work to be done under this section, the city shall send notice, pursuant to section 19-29, and a bill to the property owner by certified mail.

~~(d)~~ (c) *Parking in the yard of a residence.* In the event that a vehicle is not parked on an improved surface in a residential yard, as required by section 19-15(20), a single notice may be given to the property owner and no further notices shall be required for a period of six (6) months from the date of the notice.

CHAPTER 20, OFFENSES, is amended as set forth below:

ADD:

ARTICLE VI. GRAFFITI

Sec. 20-76. Definition.

Graffiti. Any unauthorized inscription, word, signature, symbol, design or other marking of any sort that is etched, written, painted, drawn, or applied in any other way to any structure, building, tree, vehicle, or property of any sort or to any portion or element thereof, whether the property is public or private.

Removal. The elimination of the visible evidence of graffiti through the use of chemical extraction, abrasion techniques, or by using primer, paint and/or stain to obscure the graffiti.

Sec. 20-77. Removal process.

(a) Notice to owner. Upon receiving a complaint that a structure, building, tree, vehicle, or property is marked with graffiti, the City shall contact the owner thereof and request the graffiti be removed on or before the fifteenth (15th) day following receipt of notice.

(b) The notice required by Subsection (a) must be given:

- (1) personally to the owner in writing;
- (2) by letter sent by certified mail, addressed to the property owner at the property owner's address as contained in the records of the appraisal district in which the property is located; or
- (3) if service cannot be obtained under Subdivision (1) or (2):

- (i) by publication at least once in a newspaper of general circulation in the county or municipality;
- (ii) by posting the notice on or near the front door of each building on the property to which the notice relates; or
- (iii) by posting the notice on a placard attached to a stake driven into the ground on the property to which the notice relates.

(c) Failure of owner to remove. If the property owner fails to remove the graffiti on or before the fifteenth (15th) day after the date of receipt of the notice, the City may remove the graffiti and charge the expenses of removal to the property owner in accordance with the adopted fee schedule on file with the City Secretary.

(d) Expense of removal to become lien. To obtain a lien against the property for expenses incurred under Subsection (c), the City shall file a statement of expenses with the county clerk. The statement of expenses must contain:

- (1) the name of the property owner, if known;
- (2) the legal description of the property; and
- (3) the amount of expenses incurred under Subsection (c).

(e) A lien described by Subsection (d) attaches to the property on the date on which the statement of expenses is filed in the real property records of the county in which the property is located and is subordinate to:

- (1) any previously recorded lien; and
- (2) the rights of a purchaser or lender for value who acquires an interest in the property subject to the lien before the statement of expenses is filed as described by Subsection (d).

Sec. 20-78. Exceptions and removal by City.

(a) Hazardous location. It is an exception from the requirement that an owner of property remove graffiti from the owner's property if:

- (1) the graffiti is located on transportation infrastructure; and
- (2) the removal of the graffiti would create a hazard for the person performing the removal.

(b) City's offer to remove. The City may not give notice to a property owner under Section 20-77, Subsection (a) unless:

- (1) the City has offered to remove the graffiti from the owner's property free of charge; and,
- (2) the property owner has refused the offer verbally or in writing.

(c) Offer to remove may be included in notice. The City may include the offer to remove the graffiti from the owner's property free of charge within the notice to a property owner under Section 20-77, Subsection (a) if:

- (1) the City allows an additional five (5) days for a response from the owner prior to beginning the fifteen (15) days under Section 20-77; and,
- (2) the offer to remove the graffiti from the owner's property free of charge is stated in bold type at the beginning of the notice; and,
- (3) the offer language includes a statement that failure of the property owner to respond before the end of the fifth (5th) day to the offer from the City to remove the graffiti from the owner's property free of charge shall be considered a refusal of the offer.