

An Ordinance of the City of Plano, Texas repealing Division 5, Graffiti, of Article II, Signs, of Chapter 11, Licenses and Business Regulations and amending Article I, In General, of Chapter 14, Offenses - Miscellaneous, of the Code of Ordinances of the City of Plano by adding Section 14-15, to provide for procedures and notice for graffiti removal that conform to State law; to create an offense for failure to remove graffiti; and providing a penalty clause, a severability clause, a repealer clause, a savings clause, a publication clause, and an effective date.

WHEREAS, the City Council of the City of Plano has previously enacted regulations regarding graffiti, which regulations are now codified in Chapter 11, Article II, Division 5, Sec. 11-95 through 11-100.3 of the Code of Ordinances of the City of Plano, Texas; and

WHEREAS, the Plano Police Department may enforce criminal offenses related to graffiti under the Texas Penal Code and Texas Health and Safety Code, as amended; and

WHEREAS, staff recommends changes to sections of Chapter 11, Article II, Division 5, Sec. 11-95 through 11-100.3 of the Code of Ordinances of the City of Plano to conform with State Laws related to Graffiti and its abatement; and

WHEREAS, after consideration of the recommendations of staff and all matters attendant and related thereto, the City Council is of the opinion that it is in the best interest of the City and its citizens and to promote health, safety and welfare of the citizens of Plano and the general public to repeal Chapter 11, Article II, Division 5, Sec. 11-95 through 11-100.3 and amend Chapter 14, Article I, by adding Sec. 14-15 Graffiti, as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. Article I, In General, of Chapter 14, Offenses - Miscellaneous, of the Code of Ordinances of the City of Plano is hereby amended by adding Sec. 14-15 to read in its entirety as follows:

“ARTICLE I. - IN GENERAL

Sec. 14-15. – Graffiti.

- (a) Definitions: For purposes of section 14-15, any word not defined herein shall be construed in the context used by ordinary interpretation and not as a term of art. The terms used in section 14-15 shall have the following meanings:

Etching or engraving device means a device that makes a delineation or impression on tangible property, regardless of the manufacturer's intended use for that device.

Graffiti means one or more marking, including inscriptions, slogans, drawings, or paintings, on the tangible premises of the owner with paint, an indelible marker or an etching or engraving device without the effective consent of the owner.

Indelible marker means a device that makes a mark with a paint or ink product that is specifically formulated to be more difficult to erase, wash out, or remove than ordinary paint or ink products.

Notice means notice provided by the City in accordance with Texas Local Government Code, Section 250.006, as amended.

Owner means a person having ownership in or care, custody or control over real property.

Person means an individual, firm, partnership, association, business, corporation or other entity.

Premises means real property, easement areas on real property, areas between the property line of real property and the beginning of the paved surface of a street or highway, and areas between the property line of real property and a stream, creek, river, open channel, drainage course, or drainage of a floodway easement protecting a drainage course. The term includes, but is not limited to: the area between a sidewalk adjacent to real property and a curb adjacent to a street or highway; the area between a fence, wall or barrier on real property and a curb, street or highway; and the area between a fence, wall or barrier on real property and a stream, creek, river, open channel, drainage course or drainage of a floodway easement.

(b) Offense. It shall be an offense for an owner of property, after receipt of notice from the city, to intentionally or knowingly fail to paint over or remove all graffiti from the owner's premises that is visible from any public premises or right-of-way or from any private premises other than the premises on which the graffiti exists, except where the graffiti is located on transportation infrastructure and the removal of the graffiti would create a hazard for the person performing the removal.

(c) Criminal Penalty.

(1) Any person intentionally or knowingly violating a provision of section 14-15 of this chapter shall be punished by a fine not to exceed five hundred dollars (\$500.00). Each day a violation occurs shall constitute a separate offense.

(2) Repeat and habitual offenders.

- a. If it is shown on the trial of an offense under section 14-15 that the defendant has previously been finally convicted of an offense under section 14-15, on conviction the person shall be punished by a fine of not less than five hundred dollars (\$500.00).
- b. This subsection for repeat and habitual offenders applies only to a person finally convicted of a second or subsequent offense within three years of the date on which the most recent preceding offense was committed.

(d) Abatement.

(1) Public nuisance.

- a. Graffiti is declared to be a public nuisance. In addition to the criminal offense and penalty provided in Section 14-15(b) and (c) of this ordinance, the city shall have all remedies available at law and equity to abate such nuisance.
- b. An owner maintains a public nuisance if the owner fails to remove graffiti or refuses to allow graffiti to be removed from the premises after receipt of notice, unless the graffiti is located on transportation infrastructure and removal of the graffiti would create a hazard for the person performing the removal.

(2) Authority to abate.

- a. The city is authorized to abate graffiti, in accordance with Texas Local Government Code, Section 250.006, as amended.
- b. Whenever public funds are used for graffiti removal, such removal shall include only the painting or repair of the area where the graffiti is located to the extent required to avoid aesthetic disfigurement to the neighborhood.

(3) Abatement procedures.

- a. The code official shall offer free removal of graffiti by the city. The code official may remove the graffiti, at no cost to the owner, upon receiving written consent and a waiver of liability from the owner.
- b. If the owner refuses the city's offer for removal, the code official may issue written notice to the owner in accordance with Texas Local Government Code, Section 250.006, identifying the graffiti and directing its removal on or before the 15th calendar day after the owner's receipt of the written notice.
- c. The owner shall remove the graffiti within fifteen (15) calendar days after receipt of the notice from the city,
- d. If the owner fails to remove the graffiti within fifteen (15) calendar days after receipt of the notice, the city may, without further notice, enter upon the property by it or its contractors and remove the graffiti.
- e. The city may assess expenses incurred in removal of the graffiti and obtain a lien against the property where the removal of graffiti was performed, in accordance with Texas Local Government Code, § 250.006, as amended.
- f. The expenses to be collected by the city under this section shall include, in addition to the costs of removing the graffiti, the sum of two hundred dollars (\$200.00) per lot or tract of land, which sum is hereby found to be the cost to the city of administering the terms of this section.
- g. Prior to the filing of a lien, the code official shall mail to the owner a notification of expenses incurred by the municipality for the costs of removal. In the event the incurred expenses are not paid within twenty (20) days, a lien shall be filed against the property.

(4) Appeal.

- a. The owner of property subject to abatement under this article may appeal the decision of the code official by requesting a hearing, in writing, to the code official within ten (10) days following the receipt of the notice. The hearing shall be conducted by the code official for the purpose of determining whether the conditions constitute a public nuisance under the provisions of this article. The owner shall be provided written notice of the time and place of the hearing at least ten (10) days prior thereto. At the hearing, the owner and the code official may present any evidence relevant to the proceeding. The code official's decision shall be final.

- (e) Authority for criminal enforcement and abatement. The city manager or his designee shall have authority for enforcement of criminal offenses and for abatement, assessment of expenses, and obtaining liens pursuant to section 14-15.

Secs. 14-16 – 14-25. – Reserved.”

Section II. All provisions of the Code of Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section III. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

Section IV. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this ordinance.

Section V. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(a) and 14-15(c) of the City of Plano Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VI. This ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 27th day of April, 2020.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY