

AN ORDINANCE **2010-06-24-0617**

**AMENDING CHAPTER 21, ARTICLE X OF THE CITY CODE ENTITLED "GRAFFITI" BY REVISING THE CURRENT NOTICE PROVISIONS TO PROVIDE FOR CITY REMOVAL OF GRAFFITI UPON WRITTEN CONSENT; EXTEND COMPLIANCE PERIODS TO FIFTEEN (15) DAYS; TO CLARIFY REQUIREMENTS FOR "PERMISSION WALLS"; AND PROVIDE FOR PUBLICATION.**

\* \* \* \* \*

**WHEREAS**, graffiti encourages vandalism, produces urban blight, and tends to reduce the value of public and personal property; and

**WHEREAS**, TEXAS CIVIL PRACTICE & REMEDIES CODE §101.067 provides that governmental immunity is not waived for a claim for property damage caused by the removal of graffiti under Section 250.006, TEXAS LOCAL GOVERNMENT CODE; and

**WHEREAS**, the City of San Antonio establishes and affirms its graffiti removal program in accordance with TEXAS LOCAL GOVERNMENT CODE §250.006, and determines that liens established hereby will be established and enforced in accordance with that section and other available provisions of Texas law; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Chapter 21, Article X of the City Code of San Antonio, Texas, entitled "GRAFFITI" is hereby amended to reflect revisions to the compliance period, to provide for removal of graffiti by the City upon written consent, and to clarify requirements for permissions walls; additions are signified by underline, deletions are signified by ~~strikeout~~ text as follows:

**ARTICLE X. GRAFFITI**

Sec. 21-280. Definitions.

For the purposes of this Article, the following definitions shall apply:

*Graffiti* shall mean any unauthorized inscription, word, letter, figure, symbol or design visible from a public place, public right-of-way or another person's property that is marked, etched, scratched, drawn, painted or made in any manner on any surface of tangible property regardless of its content or nature and regardless of the nature of the material of the structural component or property. It shall be a rebuttable presumption that the inscription, word, letter, figure, symbol or design was unauthorized if:

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6/24/10  
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- (a) the graffiti is inconsistent with the design and use of the subject property,
- (b) there is no specific written authorization by the owner on file with the Department for the graffiti, or
- (c) the person causing the graffiti was unknown to the owner.

*Unauthorized* shall mean without the specific written consent of the owner on file with the Department or without authority of law, regulation or ordinance.

Written Authorization shall mean the written consent of the property owner to allow graffiti on his property. Said written consent shall be on a form proscribed by the Department and filed with the Department prior to the placement of any authorized graffiti.

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Sec. 21-284. ~~Failure to remove graffiti.~~ Owner responsibility and graffiti removal.

(a) It shall be unlawful for any property owner to fail to abate or cause the abatement of graffiti from his or her property after receiving notice of the nuisance and being given an opportunity to effect the abatement within the time allowed by this Article unless otherwise exempted.

~~(b) The time period in which an owner shall abate or cause to be abated a graffiti nuisance shall be ten (10) days, but may be extended at the sole discretion of the Director.~~

~~(c) This section shall not apply to property that is residential owner-occupied or is a commercial property that is occupied with an ongoing occupied business.~~

~~(d) This section shall not apply to property or structures owned by utility companies if they provide a graffiti abatement plan, within three months of passage of the ordinance, to the city.~~

(b) This section shall not apply:

- (1) To property that is residential owner-occupied or is a commercial property occupied by an ongoing business; or
- (2) To graffiti located on transportation infrastructure; or
- (3) In cases in which the removal of the graffiti would create a hazard for the person performing the removal.

(c) Prior to any enforcement efforts by the City, the Director shall inform the property owner that the City will remove the graffiti from the owner's property

free of charge if the owner provides written consent for the removal and releases the City, its contractors, and/or volunteer personnel from liability in the performance of the graffiti abatement by completing a permission and waiver form.

- (d) If the City informs the property owner of the removal free of charge in accordance with subsection (d) and the United States Postal Service returns the notice as "refused" or "unclaimed," or the property owner fails to respond to the City's request for written permission to remove the graffiti within ten (10) days of the date such request is mailed, the property owner will be deemed to have refused the offer.

Sec. 21-285. Notice to abate graffiti.

- (a) ~~Whenever the Director has probable cause to believe graffiti has been placed upon any private property, If the property owner refuses the offer of removal free of charge, the Director shall serve written notice to abate the graffiti from the property within~~ notify the owner of the presence of the nuisance and shall provide a ten (10) fifteen (15) days after the date the notice is received. time period for the owner to abate the nuisance.

- (b) Notice under this Article shall be given:

- (1) Personally in writing; or
- (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 Bexar County Appraisal District; owner's post office address; or
- (3) If service cannot be obtained under subdivision (1) or (2):
  - (A) by publication at least once in a newspaper of general circulation;
  - (B) by posting the notice on or near the front door of each building on the property to which the notice relates; or
  - (C) by posting the notice on a placard attached to a stake driven into the ground on the property to which the notice relates.
- ~~(3) By posting the notice on or near the front door of the main building on the property to which the violation relates; or~~
- ~~(4) By posting the notice on a placard attached to a stake driven into the ground on the property to which the graffiti relates, if the property contains no buildings.~~

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6/24/10  
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- (c) If the Director mails a notice to a property owner in accordance with this section and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.
- (d) Notice under this Article shall contain:
- (1) An identification, which is not required to be a legal description, of the property;
  - (2) A description of the location of the graffiti on the property;
  - (3) The time period in which the owner must abate the nuisance;
  - (4) A statement that the owner must abate the graffiti nuisance within such time period;
  - (5) A statement that the owner may request a hearing within ~~10~~ fifteen (15) days;
  - (6) A statement that should the owner fail to abate the situation within the stated time period, the city may cause the correction and abatement work to be done on it's own and shall charge the owner for the expenses involved, and upon failure of the owner to pay the city for such expense, fix a lien on the lot or parcel for the expense involved;
  - (7) A statement that if the owner demonstrates a hardship as defined in 21-288, the Director shall cause the graffiti to be abated without cost to the owner, and no lien shall be placed on the property.
- (e) Notice under this Article shall be deemed to have been received:
- (1) For personal service, as of the date the notice was given personally to the owner; or
  - (2) For mailed notice, the date the notice is received ~~mailed~~; or
  - (3) For notice by posting, fifteen (15) days after notice was posted on the property or structure.

Sec. 21-286. Hearing.

The owner of a lot or parcel subject to abatement under this Article may request a hearing by notifying the Director within fifteen (15) days following the date the city serves the required notice. The hearing shall be conducted by a hearing official designated by the city manager for the purpose of determining whether the conditions constitute a public nuisance under the provisions of this Article. Unless notice is waived by the owner, 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 Director may present any evidence relevant to the proceedings. If the hearing official finds that conditions constituting a nuisance hereunder exist, the hearing official shall issue an order so stating.

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**SECTION 3.** All other provisions of Chapter 21, Article X of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

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**SECTION 4.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

**SECTION 5.** The City Clerk is directed to promptly publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

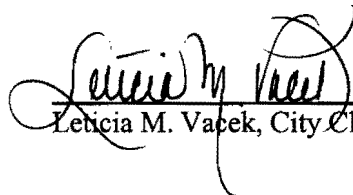
**SECTION 6.** The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

**SECTION 7.** This ordinance shall be effective on July 4, 2010.

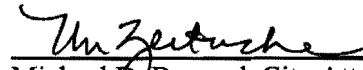
**PASSED AND APPROVED this 24<sup>th</sup> day of June, 2010**

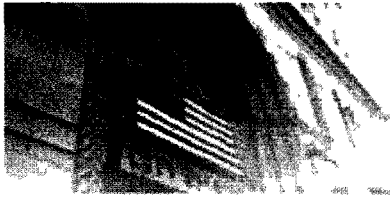
  
M A Y O R  
Julián Castro

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vapek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
for Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



## Agenda Voting Results - 40

<b>Name:</b>	7, 8, 9, 10, 11, 12, 13, 14, 16, 19, 20, 21, 22, 25, 26A, 26B, 26C, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42A, 42B, 43, 44, 47, 49, 51, 52, 53, 54, 55, 57, 58, 59, 61, 62A, 62B, 63, 64, 66						
<b>Date:</b>	06/24/2010						
<b>Time:</b>	03:30:59 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance amending Chapter 21, Article X entitled "Graffiti", of the City Code of San Antonio, Texas by amending the current notice provisions to provide for a "15 day" notice instead of the current "10 day" notice, and to further clarify existing language regarding the requirements for a property owner's consent of a "permission" wall. [T.C. Broadnax, Assistant City Manager; David D. Garza, Director, Housing and Neighborhood Services]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor	x					
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				