

Memorandum

To: Honorable Mayor Shetter and members of the Burleson City Council

From: Lisa Duello, Director of Neighborhood Services

Date: November 2, 2009

Subject: Ordinance B-791-09, amending Chapter 34 "Environment" and Chapter 54 "Miscellaneous Nuisances" of the Code of Ordinances of the City of Burleson by deleting the definition of "Graffiti" from Section 34-2 "Definitions" of Article I of Chapter 34 and deleting subsection (23) relevant to graffiti of Section 34-31 "Specific Nuisances" and mark such subsection (23) as "Reserved" of Article II of Chapter 34 and establishing a new Article VI "Graffiti" of Chapter 54 "Miscellaneous Offenses". (First Reading)

Council Action Requested:

Approve Ordinance B-791-09, amending Chapter 34 "Environment" and Chapter 54 "Miscellaneous Nuisances" of the Code of Ordinances of the City of Burleson by deleting the definition of "Graffiti" from Section 34-2 "Definitions" of Article I of Chapter 34 and deleting subsection (23) relevant to Graffiti from Section 34-31 "Specific Nuisances" and mark such subsection (23) as "Reserved" of Article II of Chapter 34 and establishing a new Article VI "Graffiti" of Chapter 54 "Miscellaneous Offenses" to conform with new state law relevant to graffiti removal. (First Reading)

Background Information:

In the recent legislative session, House Bill 2086 (HB2086) was passed relating to criminal street gangs, certain other criminal activity, and graffiti. One provision of the Bill adds Section 250.006 to the Local Government Code, which allows counties and cities to enact local laws related to graffiti abatement but requires that such laws include certain processes and meet certain requirements. The processes under the City's current ordinance do not match the ones outlined in HB2086. Therefore, staff recommends revising the City code to bring the local ordinances into conformance with the requirements of the new State law. Notable changes of the new state law include provisions that:

- a City ordinance must first offer to remove graffiti free of charge and the property owner has to refuse the free offer before the City can issue a notice to a property owner to remove graffiti; and
- require a local ordinance to exempt a property owner from the duty to remove if the graffiti is on transportation infrastructure and removal would be hazardous; and
- specify the process for a local government to recover expenses incurred in removing graffiti if the property owner has refused the offer to remove and ignored the notice to remove, including a method for filing a lien against the property.

Currently, the City of Burleson regulates graffiti within Chapter 34, Environment, "Specific nuisances." In the proposed amendments, staff recommends removing the portions of Chapter 34 relevant to graffiti and creating a new Article VI within Chapter 54, "Miscellaneous Offenses". The purpose of creating the new Article is that the new state law requires entirely different notification process from Chapter 34, and staff believes the changes were significant enough to warrant separation from Chapter 34.

The following is a timeline for the new abatement process when graffiti is found/reported on private property:

DAY 1:

- Graffiti found on private property
- Police Department makes a report/photograph
- PD forward to Code Enforcement

DAY 1- 5 :

- Code Enforcement notifies the property owner in writing, offering them to remove the graffiti free of charge.
- The property owner has five (5) days to contact the city and accept the offer and sign the written permission for removal and release.

- Property owner accepts the free removal offer and Code Enforcement contacts the contractor to remove graffiti

DAY 6:

- If an owner does not contact the city to accept an offer by the end of the fifth (5th) day after an offer from the City to remove the graffiti from the owner's property free of charge is deemed received, or if an owner refuses to sign a written permission for removal and release within such time, it shall be considered a refusal of the offer.
- After refusal of the offer, Code Enforcement will contact the property owner via certified mail, giving the property owner fifteen (15) days to remove the graffiti.

DAY 21:

- Property owner removed the graffiti, compliance is met
- Property owner did not remove the graffiti
 - Code Enforcement can issue a citation
 - Code Enforcement can enter the property and have the graffiti removed and charge the expenses to the property owner.
 - If charges are not paid a lien may be assessed against the property

Board/Citizen Input:

N/A

Financial Considerations:

The City will be required to remove graffiti from properties in which the property owner agrees to the free removal offered by the city. Staff is uncertain of the financial impact this unfunded mandate may have to the current budget. Currently, Neighborhood Services, Code Enforcement budget has a Nuisance Abatement account that is allocated for the abatement all nuisances such as high grass, trash/debris/junk removal, and dangerous structure demolition. Consequently, the demolition of one (1) structure could exhaust the majority of the budget. The expenditures used from year-to-year hinge on the compliance rate of property owners. Therefore, is unknown if this budget

account can fund all future graffiti removal. Graffiti removal expenditures will be monitored and adjustments will be made if necessary.

General Fund, Neighborhood Services Department - \$16, 519. (Account # 001-5013-436-43.03 - Nuisance Abatement)

Attachments:

1. Ordinance B-791-09
2. Permission and Consent to Eliminate Graffiti Form
3. Section 29 of HB 2086

Staff Contact:

Lisa Duello, Director of Neighborhood Services
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ORDINANCE B-791-09

AN ORDINANCE OF THE CITY OF BURLESON, TEXAS, AMENDING CHAPTER 34 "ENVIRONMENT" AND CHAPTER 54 "MISCELLANEOUS NUISANCES" OF THE CODE OF ORDINANCES, CITY OF BURLESON, TEXAS; BY DELETING THE DEFINITION OF "GRAFFITI" FROM SECTION 34-2 "DEFINITIONS" OF ARTICLE I OF CHAPTER 34 AND DELETING SUBSECTION (23) RELAVANT TO GRAFFITI OF SECTION 34-31 "SPECIFIC NUISANCES" AND MARK SUCH SUBSECTION (23) AS "RESERVED" OF ARTILE II OF CHAPTER 34; ESTABLISHING A NEW ARTICLE VI "GRAFFITI" OF CHAPTER 54 "MISCELLANEOUS OFFENSES" OF THE CODE OF ORDINANCES OF THE CITY OF BURLESON, TEXAS, TO CONFORM TO NEW STATE LAW BY PROVIDING FOR OFFER TO REMOVE GRAFFITI AT NO COST, REVISING NOTICE REQUIREMENTS, AND REFINING PROCESS FOR PLACING A LIEN ON AFFECTED PROPERTY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council ("City Council") of the City of Burleson, Texas ("Burleson") finds that it will be advantageous, beneficial and in the best interest of the citizens of Burleson to amend Chapter 34, "Environment" and Chapter 54, "Miscellaneous Nuisances" of the Code of Ordinances of the City of Burleson, Texas; and

WHEREAS, the City Council of Burleson has declared that graffiti visible from a public place, public right-of-way, or the property of others is a nuisance and is

detrimental to the safety and welfare of the public; tends to reduce the value of private property; invites vandalism, additional graffiti, and other criminal activities; and produces urban blight adverse to the maintenance and continuing development of the City of Burleson; and

WHEREAS, the 81st Legislature passed House Bill 2086 (“HB2086”), to be effective September 1, 2009, pertaining to criminal street gangs, graffiti and certain other criminal activity; and

WHEREAS, HB2086 includes a provision allowing counties and cities to enact local laws related to graffiti abatement and requires that such laws include certain processes; and

WHEREAS, the processes under the existing City ordinance, which was passed pursuant to the City’s police powers as a home-rule municipality, differ from those outlined in HB2086; and

WHEREAS, the City Council of Burleson wishes to revise the local ordinances to bring them into conformance with the requirements of the new state law.

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

SECTION 1

Chapter 34, Article I of the Code of Ordinances of the City of Burleson, Texas, is amended to read as follows:

Article 1. GENERAL

Sec. 34-2. Definitions.

Delete the definition of *Graffiti*

Article II. PUBLIC NUISANCES

Sec 34-31. Specific nuisances

Delete subsection (23) and mark such subsection “Reserved.”

SECTION 2

Chapter 54, of the Code of Ordinances of the City of Burleson, Texas, is amended to establish a new Article VI “Graffiti” and will read as follows:

Article VI. GRAFFITI

Sec. 54 – 118. Definitions.

Graffiti. The unauthorized application of paint, ink, chalk, dye or other similar substance, or other inscribed or engraved material on public or private structures located on publicly or privately owned real property within the city.

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. 54-119. Declaration of public nuisance.

The existence of graffiti on public or private property is declared to be an objectionable, unsightly public nuisance and therefore, subject to the removal and abatement provisions specified in this article.

Sec. 54-120. Graffiti Offense.

A person commits an offense if he knowingly maintains or allows graffiti to remain on public or private structures located on publicly or privately owned real property within the city.

Sec. 54.121. City's Offer to Remove.

(a) The city may not give notice to property owner under Section 54-122, 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.

(b) The City will notify the property owner in writing that the City will remove the graffiti from the owner's property free of charge and will request that the owner give written permission for removal and release the city, its contractors, volunteer personnel and city employees from liability in performance of graffiti abatement by completing a permission and release from liability form.

(c) The City's offer in writing to the owner to abate the graffiti free of charge must be given:

1. personally to the owner in writing;
2. by letter addressed to the property owner at the property owner's last known address as contained in the records of the appraisal district in which the property is located; or
3. if service cannot be obtained under Paragraph 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.
4. Any notice that is mailed to a property owner in accordance with this article, 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.

5. Notice will be deemed to have been received:
 - a. For personal service, as of the date the notice was given personally to the owner;
 - b. For mailed notice, three days after date of postmark;
 - c. For notice by publication, on the date that the last notice was published in the official newspaper; or
 - d. For notice by posting, five (5) days after the notice was posted.

6. If an owner does not contact the city to accept an offer by the end of the fifth (5th) day after an offer from the City to remove the graffiti from the owner’s property free of charge is deemed received, or if an owner refuses to sign a written permission for removal and release within such time, it shall be considered a refusal of the offer.

Sec. 54- 122. Graffiti removal process.

(a) *Notice to owner.* The City must notify the property owner of a violation of this article and must give the owner the opportunity to remove the graffiti.

(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.
4. Any notice that is mailed to a property owner in accordance with this article, 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.
5. Notice will be deemed to have been received:
- a. For personal service, as of the date the notice was given personally to the owner;
 - b. For mailed notice, three days after date of postmark;
 - c. For notice by publication, on the date that the last notice was published in the official newspaper; or
 - d. For notice by posting, fifteen (15) days after the notice was posted.

(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 on which the property owner is deemed to have received the notice, the City may:

- 1. issue a citation for a violation of this article; or
- 2. enter the property and do all work necessary to abate the graffiti and charge the expenses of the abatement to the property owner in accordance with a fee schedule adopted by the City Council.

(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. 54.123. Exceptions.

(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.

SECTION 3

This ordinance shall be cumulative of all provisions of ordinances and the Code of the City of Burleson, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and Code, in which event the conflicting provisions of such ordinances and Code are hereby repealed.

SECTION 4

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are 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 and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of the ordinances amended herein, which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 6

Any person, firm, association of persons, company, corporation, or their agents, servants, or employees violating or failing to comply with any of the provisions of this Ordinance shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than five-hundred dollars (\$500.00), and each day any violation or noncompliance continues shall constitute a separate and distinct offense.

SECTION 7

The City Secretary of the City of Burleson is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

SECTION 8

The City Secretary of the City of Burleson is hereby directed to publish in the official newspaper of the City of Burleson, the caption, penalty clause, publication clause and effective date clause of this ordinance at least two (2) times within fourteen (14) days after the passage of this ordinance as required by Section 36 of the Charter of the City of Burleson.

SECTION 9

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON FIRST READING THIS ____ DAY OF _____, 2009.

MAYOR

ATTEST:

CITY SECRETARY

PASSED AND APPROVED ON FINAL READING THIS _____ DAY OF _____, 2009.

MAYOR

ATTEST:

CITY SECRETARY

PERMISSION AND CONSENT TO ELIMINATE GRAFFITI FREE OF CHARGE

FREE GRAFFITI REMOVAL

I, the undersigned RELEASOR, certify that I own or have the authority to consent to graffiti removal for the property located at the address shown below. I hereby give permission and consent to the City of Burleson and the City's employees, officers, contractors, and volunteers to enter my property at their convenience for the purposes of inspecting and eliminating graffiti free of charge located on exterior surfaces of the property. The City may remove graffiti in the manner it deems appropriate, including but not limited to, power washing, painting or the use of chemical solvents. The City will, in good faith, attempt to remove the graffiti from the property. However, by signing below, I understand that: 1) the city shall decide what is the best method available for removing the graffiti. 2) only the area covered by the graffiti will be cleaned or painted and not the entire structure. 3) there are no promises being made about the color or quality of the services or materials used in doing the graffiti removal and the City nor the City's contractor is required to conceal or remove the graffiti to my satisfaction. **I DO HEREBY WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF BURLESON AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, AND CONTRACTORS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, WHICH MAY ARISE BY REASON OF INJURY OR DEATH TO PERSONS OR LOSS OF, DAMAGE TO OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION OR NEGLIGENT ACT OF THE CITY OF BURLESON AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, AND CONTRACTORS, OR ANY OTHER PERSON WITH REGARD TO THIS AGREEMENT, AND I WILL, AT MY OWN COST AND EXPENSE, INDEMNIFY, DEFEND, HOLD HARMLESS AND PROTECT THE CITY OF BURLESON AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.**

The permission and consent granted herein to enter the above described property and to abate graffiti shall remain in effect for as long as I own the property. I understand that I may cancel this future consent by written notice to the City of Burleson Director of Neighborhood Services.

RELEASOR:

Address of Graffiti: _____

Printed Name: _____

Signature: _____

Signatory's Address: _____

Date: _____

Phone: _____ (daytime) _____ (evening)

This form can be mailed to:
City of Burleson, Neighborhood Services
ATTN: Lisa Duello
141 W. Renfro St.
Burleson, TX 76028
Or faxed to: (817) 426-9377

H.B. No. 2086

SECTION 29. Chapter 250, Local Government Code, is amended by adding Section 250.006 to read as follows:

Sec. 250.006. GRAFFITI REMOVAL. (a) Except as provided by Subsection (h), a county by order or a municipality by ordinance may require the owner of property within the jurisdiction of the county or municipality to remove graffiti from the owner's property on receipt of notice from the county or municipality.

(b) The order or ordinance must provide that a county or municipality may not give notice to a property owner under Subsection (a) unless:

(1) the county or municipality has offered to remove the graffiti from the owner's property free of charge; and

(2) the property owner has refused the offer.

(c) The order or ordinance must require a property owner to remove the graffiti on or before the 15th day after the date the property owner receives notice under Subsection (a). If the property owner fails to remove the graffiti on or before the 15th day after the date of receipt of the notice, the county or municipality may remove the graffiti and charge the expenses of removal to the property owner in accordance with a fee schedule adopted by the county or municipality.

(d) 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):

(A) by publication at least once in a newspaper of general circulation in the county or municipality;

(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.

(e) The county or municipality may assess expenses incurred under Subsection (c) against the property on which the work is performed to remove the graffiti.

(f) To obtain a lien against the property for expenses incurred under Subsection (c), the governing body of the county or municipality must 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).

(g) A lien described by Subsection (f) 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 (f).

(h) An order or ordinance described by this section must include 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.