

## **ORDINANCE NO. 12-C**

**AN ORDINANCE OF THE CITY OF ALVIN, TEXAS AMENDING CHAPTER 15, OFFENSES AND MISCELLANEOUS PROVISIONS OF THE CODE OF ORDINANCES, CITY OF ALVIN, TEXAS BY AMENDING ARTICLE VIII - GRAFFITI ABATEMENT, TO CONFORM TO NEW STATE LAW BY REVISING GRAFFITI REMOVAL, NOTICE REQUIREMENTS, AND LIEN PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.**

**WHEREAS**, the Alvin City Council has previously found that graffiti that is visible from a public place, public right-of-way, or the property of others 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 Alvin; and

**WHEREAS**, on June 7, 2007, the City Council adopted ordinance 07-DD, which includes the above findings and declares the presence of certain graffiti to be a nuisance, requires property owners to remove graffiti, and allows the City to remove graffiti and assess the costs against a property if the owner does not remove the graffiti after being notified by the City to do so; and

**WHEREAS**, the 81st Legislature passed House Bill 2086 ("HB2086"), to be effective September 1, 2009, pertaining to criminal street gangs 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 Alvin City Council wishes to reaffirm its previous findings regarding graffiti as a public nuisance and to revise the local ordinances to bring them into conformance with the requirements of the new state law.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS:**

**Section 1.** That certain sections of Article VIII, Graffiti Abatement, of the Code of Ordinances, City of Alvin, Texas; is hereby amended, which said sections shall read as follows:

## **ARTICLE VIII. GRAFFITI ABATEMENT**

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### **Sec. 15-94. Definitions.**

The following words, terms, and phrases; when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning;

*Graffiti:* Any unauthorized painting, scratching, writing or inscription, including initials, slogans, symbols or drawings, that has been applied to any wall, building, fence, window, sign or other structure or surface, which is visible from: (1) any public property, (2) any public right-of-way, or (3) another person's property. "Graffiti" does not include any of the foregoing that is placed on the property in compliance with any applicable city ordinance, state or federal law.

*Owner:* Any owner of record, person who has contractual responsibility for the property, or person who has the legal right of possession of the property. There shall be a rebuttable presumption in prosecutions under this article that the person who is listed on the tax records for the county wherein the property is situated is the owner. There shall be a rebuttable presumption in prosecutions under this article that the last named customer on the account for utility services furnished by the City of Alvin is the person who has the legal right of possession of the property.

*Remove or removal* means to take off, eliminate or covering the graffiti to the point it is no longer or reasonably discernible as graffiti.

*Unauthorized:* means without the consent of the owner or without authority of law. Unless the owner proves otherwise, lack of consent will be presumed under circumstances tending to show (i) the absence of evidence of specific authorization by the owner, (ii) that the visual blight is inconsistent with the design and the use of the subject property, or (iii) that the person causing the visual blight was unknown to the owner.

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### **Sec. 15-96. Owner Duty to Remove Graffiti and Graffiti Removal Program.**

~~A person commits an offense if the person is the owner of property within the City or its extraterritorial jurisdiction and the owner knowingly fails to paint over or remove the graffiti, or fails to allow said graffiti to be painted over or removed, from the property within 10 days after being notified by the City of the presence of graffiti on the owner's property.~~

(a) It shall be unlawful for an owner to permit graffiti to remain on their property except where:

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

(b) Prior to the enforcement or removal efforts by the City; the Building Official, Code Enforcement, Police Department or their designee shall inform a property owner in writing that the City will remove the graffiti from the owner's property free of charge and shall request that the property owner give written permission for removal and release the city, its contractors, and/or volunteer personnel from liability in the performance of the graffiti abatement program by completing a permission and release from liability form.

(c) Should the property owner give written permission for the City to remove the graffiti, the City may remove the graffiti free of charge. No enforcement or lien efforts shall be undertaken against a property owner who has given written permission for the City to remove the graffiti.

(d) If the property owner refuses the offer of removal free of charge, the Building Official, Code Enforcement or their designee shall serve the property owner with written notice to abate graffiti from the property within fifteen (15) days after the date the notice is received. The notice to abate the graffiti shall 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 subsection (1) or (2), then by:

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

(ii) posting the notice on or near the front door of each building on the property to which the notice relates; or

(iii) posting the notice on a placard attached to a stake driven into the ground on the property to which the notice relates.

(e) If the Building Official, Code Enforcement or their designee 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.

**Sec. 15-97. Content of Notice to Owner.**

~~(a) The city must notify the property owner of the existence of graffiti on his or her property before issuing a citation for a violation of section 15-93.~~

~~(b) Notice must be given:~~

~~(1) in writing and delivered to the owner in person;~~

~~(2) by letter addressed to the owner at the owner's post office address, and sent certified mail, return receipt requested; or~~

~~(3) if personal service cannot be obtained or the owner's post office address is unknown:~~

~~a. by posting the notice on or near the front door of each building on the property to which the violation relates; or~~

~~b. by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.~~

~~(c) Notice will be deemed to have been received:~~

~~(1) for personal service, as of the date the notice was given personally to the owner;~~

~~(2) for mailed notice, three (3) days after it was mailed;~~

~~(3) for notice by posting, ten (10) days after notice was posted.~~

(a) The notice provided to an owner in Section 15-96 shall include the following:

(1) the name of the owner.

(2) the date and nature of the graffiti, to include a description detailing the color and approximate size and location of the graffiti;

(3) the physical location of the property on which the graffiti exists by street address or lot and block number;

#### **Sec. 15-98. ~~Penalty.~~Failure to Abate Graffiti**

~~Any person violating a provision of this chapter shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine in accordance with the general penalty section 1-11 of the Code of Ordinances.~~

(a) If the graffiti is not removed by the owner within fifteen (15) calendar days after the date the notice is received, or the property owner refuses the offer of removal free of charge, the city may, without further notice, make entry upon by city personnel or a city contractor and/or volunteer personnel and remove the graffiti.

(b) If the city removes the graffiti after notice is given and the fifteenth (15<sup>th</sup>) after the date of the notice has passed, the expenses of removal in accordance with the Chapter 28 fees adopted by the city will be charged to the property owner for the expense of removal and a lien may be filed against the property.

#### **Sec. 15-99. ~~Defenses~~Assessment of Expenses, Liens and Penalty.**

(a) The city may assess the expenses of removal by the city for the abatement of graffiti pursuant to section 15-98 against the real property on which the graffiti abatement was done.

(b) To obtain a lien against the property for expenses incurred under Section 15-98, the Building Official, Code Enforcement or their designee, on behalf of the City, must file a

statement of expenses with the County Clerk of the County in which the property is located. 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 Section 15-98.

(c) the lien shall be 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 (b).

~~It is an affirmative defense to prosecution of this offense that the property owner:~~

- ~~(1) has removed graffiti from that particular property three or more times within the preceding 12 months, and~~
- ~~(2) has taken all reasonable efforts to prevent the application of graffiti on that property.~~

(d) Any person violating a provision of this chapter shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine in accordance with the general penalty section 1-5 of the Code of Ordinances.

(e) When a property owner refuses the offer of free removal, or the graffiti is not removed by the owner within fifteen (15) calendar days after the date the notice is received the city shall assess to the owner a charge for all work done to abate the graffiti nuisance, including an administrative expense as provided in Chapter 28, Comprehensive Fee Ordinance, of this code, and cause the expense thereof to be assessed on the property upon which such expense is incurred. All revenue collected shall be deposited in a separate account in the city dedicated to graffiti abatement.

(1) A statement of the costs incurred by the city to abate the nuisance shall be mailed to the owner, if the owner and mailing address are known, and, if not known, may be published in a newspaper of general circulation in the city. The statement shall demand payment within thirty (30) calendar days from the date of receipt or publication.

(2) If such statement has not been paid within such period, the city manager, or designee, may file a statement of expenses incurred with the county clerk, stating the owner's name, if known, and the legal description of the lot or parcel. The statement of expenses or a certified copy of the statement shall be prima facie proof of the expenses incurred. Such statement shall be, and the city shall have a privileged lien for expenditures made and interest accruing at the rate allowed by applicable law on the amount due from the date incurred by the city.

**Sec. 15-100 thru 15-105. Reserved.**

**Section 3. Savings Clause.** That except as amended herein all other provisions of Chapter 15 of the Code of Ordinances, City of Alvin, Texas shall remain in full force and effect. To the extent of any conflict or inconsistency between the provisions of this Ordinance and any other ordinance, the provisions of this Ordinance shall control.

**Section 4. Severability.** Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

**Section 5. Publication.** The City Clerk of the City of Alvin is hereby directed to publish this ordinance, or its caption and penalty clause, in one issue of the official City newspaper as required by the Charter of the City of Alvin, Texas and *Chapt. 52, Tex. Loc. Gov't. Code*.

**Section 6. Effective Date.** This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of *Chapt. 52, Tex. Loc. Gov't. Code* and the *City of Alvin Charter*.

**Section 7. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

**PASSED AND APPROVED** on first reading this \_\_\_\_ day of \_\_\_\_\_, 2012.

**PASSED AND APPROVED** on second and final reading this \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

**CITY OF ALVIN, TEXAS**

By: \_\_\_\_\_  
Thomas W. Peebles, City Clerk

By: \_\_\_\_\_  
Gary Appelt, Mayor