

Item #: 26

Moved by: MULROY

Prepared by: Craig E. Willis

Seconded by: HARVEY

Approved by: Craig E. Willis
Assistant County Attorney

ORDINANCE NO. 406

ORDINANCE AMENDING CHAPTER 16 OF THE SHELBY COUNTY CODE OF ORDINANCES TO PROHIBIT THE MAKING OR FACILITATION OF GRAFFITI AND TO RESTRICT THE MAINTENANCE OF GRAFFITI ON ANY PUBLICLY OR PRIVATELY OWNED PROPERTY. SPONSORED BY COMMISSIONER HENRI BROOKS.

WHEREAS, Tennessee Code Annotated, Section 6-54-127(b)(2), defines “graffiti”, without limitation, as: any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, fence, gate, building or other structure; provided, this definition shall not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, by an authorized agent for such owner or tenant, or unless otherwise approved by the owner or tenant; and

WHEREAS, Tennessee Code Annotated, Section 39-14-412(b), provides: “It is an offense for any person to knowingly damage or deface real or personal property of the state, or a subdivision thereof, by the painting or other permanent application of graffiti directly onto the property;” and

WHEREAS, The proliferation of graffiti is a serious problem that contributes to

urban blight and blighting conditions and could, if left unchecked, erupt into an epidemic; and

WHEREAS, The proliferation of graffiti also tends to lead to the proliferation of other crimes, including gang activity, and conveys a message that a community is unsafe and may be the territory for certain gang activity; and

WHEREAS, Graffiti vandalism is committed by adults as well as juveniles; and

WHEREAS, Graffiti vandalism costs public and private property owners substantially in terms of the loss of property values and the costs for the clean-up, removal or repair of graffiti damaged property; and

WHEREAS, All persons directly or indirectly involved in acts of graffiti vandalism on public or privately owned property, including those who knowingly make available the tools, writing materials, ladders, lookouts, materials or assistance, or who knowingly supply funds to acquire such materials for such purposes, are equally responsible and guilty of the act, in addition to the individual or individuals who personally defaced the object or area.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, OF SHELBY COUNTY, TENNESSEE, That Chapter 16 of the Shelby County Code of Ordinances is hereby amended so as to prohibit the making or facilitation of graffiti and to restrict the maintenance of graffiti on any publicly or privately owned property by adding the following new article:

Article . Graffiti Vandalism.

Sec. 16- . Definitions.

The following words and phrases, when used in this article, shall have the meanings ascribed in this section, except where the context clearly indicates a different meaning:

Aerosol paint container means any aerosol container which is adapted or made for the purpose of spraying paint or other substance capable of defacing property.

Graffiti shall be defined by the meaning set forth in Tennessee Code Annotated, Section 6-54-127(b)(2), as amended or may be amended, and includes any inscription, word, figure, or design that is marked, etched, scratched, drawn, painted, pasted or otherwise affixed to or, on any surface, regardless of the nature of the material of that structural component, to the extent that same was not authorized in advance by the owners thereof.

Graffiti implement means an aerosol paint container or a graffiti stick.

Graffiti stick means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure, and upon application, of leaving a mark at least one-quarter of an inch in width and not water-soluble.

Graffiti vandalism means engaging directly or indirectly in any act prohibited by this article which defaces, tags or marks any identifiable address, parcel, property, area or location within the County.

Sec. 16- . Graffiti vandalism prohibited.

(a) It shall be unlawful for any person to apply graffiti on any public or privately owned structure or fixture located on public or privately owned real property located within the County.

(b) Graffiti that defaces, covers or substantially covers more than five square feet shall be deemed to be a separate and distinct act of graffiti vandalism, with each five square feet of defaced or damaged property being chargeable as a separate act of graffiti vandalism, whether or not such graffiti was applied in the course of a single event or course of events at, on or about an identifiable address, parcel, property, area or location, including fixtures.

(c) All persons directly or indirectly involved in acts of graffiti vandalism may be found to be equally responsible for such act, in addition to the individual who personally defaced the object or area, such as others in the group who knowingly make available the tools, writing materials, ladders, lookouts, materials or assistance, or who knowingly supply funds to acquire such materials for such purposes.

Sec. 16- . Possession of graffiti implements by minors prohibited; exception.

It shall be unlawful for any person under the age of 18 years to have in his possession any graffiti implement while upon public property or upon private property without the consent of the owner of such private property whose consent is given in advance and whose consent shall be given as to the person's presence while in possession of a graffiti implement.

Sec. 16- . Possession of graffiti implements prohibited in designated public places.

It shall be unlawful for any person to have in his possession any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or property, or within 100 feet of an underpass, overpass, bridge abutment, retaining wall, storm drain, or similar types of infrastructure unless otherwise authorized in writing by the property owner.

Sec. 16- . Sale of graffiti implements to minors prohibited.

(a) For purposes of this section, bona fide evidence means a document issued by a federal, state, county, or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

(b) No person or firm shall sell or cause to be sold to any person under the age of 18 years, and no person under the age of 18 years shall buy any graffiti implement as defined in this article. Evidence that a person, or his employee or agent demanded and was shown bona fide evidence that the purchaser was of the age of 18 years or older and acted upon such evidence in a transaction or sale shall be a defense to any violation of this section.

Sec. 16- . Retail commercial establishments; prudent display standards; signage required.

(a) Every person who operates a retail commercial establishment selling aerosol paint shall store or display such paint either (1) in line of sight of a workstation normally, continuously occupied during business hours, (2) under electronic or other surveillance, or (3) in such a manner so as to require employee assistance for customer access.

(b) Every person who operates a retail commercial establishment selling graffiti implements shall place a sign in clear public view at or near the display of such products with the following statement in capitalized bold print of at least 14-point font:

GRAFFITI VANDALISM IS AGAINST THE LAW. ANY PERSON WHO VANDALIZES REAL OR PERSONAL PROPERTY WITH PAINT OR ANY OTHER LIQUID OR DEVICE IS VIOLATING THE SHELBY COUNTY CODE OF ORDINANCES, CHAPTER 16, ARTICLE _____, "GRAFFITI VANDALISM."

Sec. 16- . Parental civil liability.

Any parent or legal guardian who consents to, permits, or otherwise knowingly allows his child under the age of 18 to possess a graffiti implement which is found to have been used to deface private or public property shall be personally liable for any and all costs to any person incurred in connection with the removal of graffiti caused by such child or by such graffiti implement.

Sec. 16- . Graffiti removal required; notice.

(a) Every owner of real or personal property shall keep such property, or cause such property to be kept, free of all graffiti. Upon receipt of written notice from the County, a property owner shall remove graffiti within 15 calendar days.

(b) If the real or personal property owner fails to remove graffiti in accordance with subsection (a) of this section, the County may offer its graffiti removal services and attempt in good faith to obtain written consent and a waiver of liability from the owner for such service. If the property owner fails to accept the County's offer to provide removal services within 15 calendar days of receiving the County's offer to provide such services, the property may be declared a nuisance which may be abated in any manner provided by law.

Sec. 16- . Graffiti removal by County.

(a) Subject to the availability of annual appropriations, the County may provide graffiti removal services to abate graffiti on real or personal property without charge to the property owner if the property owner first executes a written consent and waiver of liability.

(b) The Division of Public Works, Division of Community Services and/or any other division that the County Mayor designates, and/or the County Sheriff's Office may expend funds to remove graffiti or other inscribed material from publicly or privately owned real or personal property located within the County that has been defaced with graffiti or other inscribed material. Such division or office may, however, use the services of persons ordered by a court of competent jurisdiction to remove graffiti or other inscribed material, or to repair or replace the defaced real or personal property pursuant to this article.

(c) The County and its officers, employees, agents, volunteers and persons ordered to perform nuisance or graffiti removal by a court of competent jurisdiction shall not be liable for any damages or loss of property due to the removal of graffiti performed pursuant this article or due to the failure of the County to remove graffiti or to repair or replace property defaced by graffiti.

Sec. 16- . Anti-graffiti trust fund.

(a) Fines and penalties assessed against violators of this Article shall be placed in the County's Anti-Graffiti Trust Fund. The County shall use such funds for the cost of graffiti removal and for such other public purpose as may be approved by Resolution of the Board of County Commissioners.

(b) The County Mayor and/or Sheriff may also use Anti-Graffiti Trust Funds or other County or public funds or grants for anti-graffiti education, prevention and community outreach, and graffiti abatement efforts to include, without limitation, painting, installing or erecting murals or art or other devices at locations or on areas prone to graffiti vandalism. Such anti-graffiti projects may be painted, installed or erected by neighborhood or community groups, community development agencies or corporations, non-profit agencies and/or other entities, and may be supported or assisted with Anti-Graffiti Trust Funds or other County funds.

Sec. 16- . Reimbursement to County.

In the event the person responsible for an act of graffiti vandalism is found by a court of competent jurisdiction to have violated this Article and is ordered to pay restitution for such act, the restitution shall first be directed to the County's Anti-Graffiti Trust Fund for reimbursement for the cost of removing graffiti or repairing or replacing property that has been defaced by graffiti, which shall include, but not limited to, the expenditure of Anti-Graffiti Trust Funds or other County funds.

Sec. 16- . Anti-graffiti hotline.

The County Mayor may operate a hotline or a joint hotline with any municipality in the County for the purpose of receiving reports of unlawful application of graffiti on public or private property.

Sec. 16- . Student education.

All schools within the County are hereby requested and urged to develop educational training materials for use in a one-hour class of instruction covering the adverse societal impact of graffiti and appropriate ways of visual and esthetic expression for age appropriate students at the elementary and secondary level.

Sec. 16- . Sheriff to report effectiveness of article.

For the first year following the effective date of this article, the County sheriff's office shall present quarterly reports to the Board of County Commissioners. Such report shall include, but not be limited to, the number of Ordinance citations issued for violations of this article, the disposition of such citations, and a recommendation as to the effectiveness of this Article.

BE IT FURTHER ORDAINED, That this Ordinance is hereby approved for the

purpose of maintaining the public safety, health, welfare, convenience and morals and to protect the public and private investments in properties situated in Shelby County.

BE IT FURTHER ORDAINED, That this Ordinance shall apply to the unincorporated areas of Shelby County.

BE IT FURTHER ORDAINED, That the provisions of this Ordinance are deemed severable. Should any provision hereof be declared void then all other provisions shall be given full force and effect to the extent not inconsistent therewith.

BE IT FURTHER ORDAINED, That this Ordinance shall take effect in accordance with the Shelby County Charter, Article II, Section 2.06(C)."

/s/ Mark H. Luttrell, Jr.
County Mayor

Date: July 19, 2011

ATTEST:

/s/ Evelyn Guy
Clerk of County Commission

FIRST READING: APRIL 18, 2011

SECOND READING: MAY 16, 2011

ADOPTED
THIRD READING: JULY 11, 2011