

## STAFF REPORT

To: Mayor and City Council Date: April 22, 2014  
From: Cathy Ball, PE, Assistant City Manager  
Via: Gary Jackson, City Manager  
Subject: Graffiti Ordinance

Summary Statement: Staff recommends adoption of an ordinance to allow significant civil penalties to perpetrators and encourage property owners to quickly remove graffiti from their property. Staff also recommends that Council approve moving forward with a 90 day graffiti initiative program to significantly reduce graffiti vandalism in the City.

Review: The City of Asheville recognizes that graffiti vandalism has sufficient negative impact on the economic vitality and quality of life of our community. Since 2007 the City has made efforts to remove graffiti from public property. The City spends approximately \$90,000 per year to remove graffiti from public property. The City utilizes nuisance court resources to assist in the removal. Some of which have been charges with graffiti vandalism. During this period of time, we have removed over 10,000 tags.

The City has also attacked this problem with higher level of police enforcement. Under the current state law, the City has processed graffiti vandals to the maximum of their ability.

The difference between beautiful mural wall art and graffiti vandalism may be difficult for some to define. Quite simply, graffiti vandalism is illegal and unwanted damage to private property. Murals are commissioned and add value to our economic vitality. National data supports the fact the graffiti vandalism has several negative impacts on communities. Some of which are listed below.

- Property owners incur tremendous expense in removing graffiti.
- Vandalism left unaddressed breeds more vandalism. (Broken Windows theory)
- The negative image that graffiti generates results in a loss of customers to business owners.
- Property and business owners may incur devalued property.
- Taxpayers' dollars are spent removing graffiti from public buildings, monuments and park structures.
- The overall image of a community is affected.

We know from research that there are three essential elements to reducing graffiti vandalism in our community. These are education, enforcement and rapid removal.

1. **Education:** Education efforts related to graffiti can be viewed in two general categories: General and Public Engagement. Essential to both educational components is Community ownership of the problem. There continues to be coordination of efforts between City staff and community stakeholders to increase education while at the same time minimizing publicity.

2. **Enforcement:** The Asheville Police Department (APD) has developed a comprehensive strategy to improve reporting, provide a consistent investigative response and use predictive analytics in an effort to focus enforcement resources.
3. **Rapid Removal:** The N.C. Communities benchmarked require property owners to clean the graffiti off their buildings in a specified amount of time to avoid civil penalties. While many N.C. cities have found this to be the most effective way to reduce or eliminate graffiti, *Asheville will not assess a civil penalty against the property owner*. Instead, through outreach and education, Asheville is hopeful that most property owners will partner with the City and/or remove graffiti; if that does not happen the City may consider asking for equitable relief from the courts.

The City's "Graffiti Removal Initiative" consists of three steps. The **first** step is to immediately impose significant escalating civil penalties on the perpetrator. This scale is detailed in the attached draft ordinance.

The **second** step is a 90 day concentrated initiative to aggressively remove graffiti from public property. A 90 day graffiti removal initiative to allow the property owners to get significant assistance from the City is proposed from July 1, 2014 to September 30, 2014. During this time, the property owner can request assistance from the City. The property owner would be required to sign a waiver and agree to pay 10% of the cost of removal. The City would pay up to \$500 per building per incident. The City would consider budgeting \$300,000 toward this 90 day graffiti removal initiative.

The **third** step in the graffiti removal initiative is to require property owners to remove graffiti on their property with a reduced level of assistance from the City. This step would begin on October 1, 2014, when the ordinance is fully in effect, the City would still provide assistance to the property owners in the graffiti removal process but the owner will be responsible to reimburse 100% of the cost of removal. **This ordinance does not fine the property owner for failure to remove graffiti.**

The City's new Graffiti Ordinance encourages property owners to immediately remove graffiti. The ordinance will not become effective as to the property owner until October 1, 2014, while the City implements a graffiti removal assistance program, to partner with and assist private property owners in removing graffiti from their properties. Upon a property owner's failure to remove graffiti and/or partner with the City to remove the graffiti, the City will, upon compliance with process, remove the graffiti and assess a lien against the property. Additionally, the perpetrators will continue to be subjected to criminal prosecution, while the new ordinance will also require the assessment of a civil penalty against the perpetrator, based upon an escalating formula.

Pros:

- Encourages graffiti to be removed quickly.
- Provides for stricter monetary penalties to perpetrators.
- Establishes an assistance program for property owners.
- Property owners will not be fined for failure to remove graffiti from their property.
- Small business owners will have an opportunity to earn money removing graffiti from properties.

Cons:

- The fiscal impact is substantial but important to attach the graffiti vandalism issue.

Fiscal Impact: The City would include \$300,000 in the FY 2015 Manager's Recommended Budget for the first 90 days of the graffiti removal initiative. Administrative cost will also be included in the FY 2015 Manager's Recommended Budget for the program. The money for this initiative would come from the City's fund balance.

Recommendation: Staff recommends adoption of an ordinance to allow significant civil penalties to perpetrators and encourage property owners to quickly remove graffiti from their property. Staff also recommends that Council approve moving forward with a 90 day graffiti initiative program to significantly reduce graffiti vandalism in the City.

Attachment:  
(1) Ordinance

ORDINANCE NO. \_\_\_\_\_

**ORDINANCE AMENDING CHAPTER 10 (NUISANCES) OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE BY ADDING ARTICLE VI (REGULATION OF GRAFFITI)**

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WHEREAS, the City Council of the City of Asheville is authorized by N.C.G.S §160A-174, to define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health safety, or welfare of its citizens and the peace and dignity of the City and may define and abate nuisances; and

WHEREAS, the City Council of the City of Asheville is authorized by N.C.G.S §160A-175 and N.C.G.S. §160A-193, to impose fines and penalties for violation of its ordinances and to remove, abate, or remedy public health and safety nuisances within the City limits; and

WHEREAS, the City Council of the City of Asheville declares that the existence of graffiti on public and private property, is a public nuisance as it is destructive of the rights and values of property owners as well as the entire community and a detriment to the health, safety and welfare of its citizens; and

WHEREAS, there currently exist within the City, a graffiti removal program on City owned property; and

WHEREAS, the City Council of the City of Asheville finds it necessary and in the best interest of the health, safety, welfare and the peace and dignity of the City to expand the current graffiti removal program to private property in furtherance of the City of Asheville strategic goal to make Asheville a safe and secure community;

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

Section 1: Chapter 10 (Nuisances) of the Code of Ordinances of the City of Asheville is hereby amended by adding a new Article VI to read as follows:

**Article VI. Regulation of Graffiti**

**Sec. 10-110. General.**

(a) Purpose

Graffiti is destructive of the rights and values of public and private property owners as well as the entire community. Unless the City Council acts to enforce removal of graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, entire neighborhoods are affected and become less desirable places in which to live, work and visit, all to the detriment of the City; and is hereby declared a public nuisance. The City Council intends through the adoption of this ordinance to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The City does not intend this ordinance to conflict with existing anti-graffiti state laws, including but not limited to malicious injury to property.

(b) Definitions.

- (1) *Graffiti*: Writings, drawings, inscriptions, figures or marks of paint, ink, chalk, dye or other similar substance on public or private buildings, sidewalks, streets, structures, or places which are not authorized or permitted by the property owner or possessor. For the purposes of this chapter, graffiti shall include drawings, writings, markings or inscriptions regardless of the content or nature of materials used in the commission of the act. Provided however, this definition shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings which are used in connection with traditional children's activities such as drawings of bases for ball games, hopscotch and similar activities, nor does it include temporary, easily removable markings used in connection with any lawful business or public purpose or activity and markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews.
  - (2) *Perpetrator*: The person who engages in graffiti.
  - (3) *Property owner*: The owner of the property, such property owner's agent or any person in lawful control or possession of the property.
  - (4) *Person*: Any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (c) Use of public funds: Whenever the City becomes aware of or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the City shall be authorized to use public funds to assist in the removal, painting, obscuring or repairing of the graffiti.

### **Sec. 10-111. Graffiti Prohibited.**

- (a) It shall be unlawful for any person to place graffiti upon the surface of any public or private property.
- (b) Any person who applies graffiti upon the surface of any public or private property is guilty of a misdemeanor and shall be subject to prosecution in accordance with N.C.G.S. §14-127 and N.C.G.S. §14-160. In addition to criminal prosecution, such person shall be subject to the additional enforcement provisions set forth herein.
- (c) It shall be unlawful for any property owner to permit property that is defaced with graffiti to remain defaced; such property owner shall be subject to the civil enforcement provisions herein.
- (d) It is the specific intent of this Article to regulate the placement of graffiti and the failure to remove graffiti as a civil violation only and not as a criminal violation. Provided however, nothing herein is intended to prevent, restrain or prohibit the criminal prosecution of graffiti perpetrators under the laws of the State of North Carolina.

### **Sec. 10-112. Removal Required.**

- (a) Immediate removal: It is the responsibility of the property owner to immediately remove graffiti from the property owner's property. The property owner should not wait for the City to send a violation notice but shall take immediate and prompt action to remove the graffiti when applied.
- (b) Removal by Property Owner: It shall be unlawful for any property owner to fail to remove or effectively obscure any graffiti upon property they own within seven (7) business days after receiving written notice from the City to remove such graffiti ("Notice to remove"). Notice to remove shall be served either by personal delivery, registered mail or certified mail, returned receipt requested in conjunction with regular mail and posting in a conspicuous place on the premises in violation. If the regular mail is not returned within ten (10) days, service shall be deemed sufficient. The Notice to remove shall provide:
- (1) The street address or other description of the property sufficient for property identification;
  - (2) A description and general location of the graffiti;
  - (3) A statement that the property is a public nuisance due to the existence of the graffiti;
  - (4) Statement that the graffiti must be removed or effectively obscured within seven (7) business days after receiving Notice to remove and that if the nuisance is not so abated within that time, the City will abate the public nuisance at the cost of the Property Owner as set forth herein;
  - (5) Information identifying any graffiti removal assistance available through the City; and
  - (6) Information concerning procedure for appeal of the Notice to remove.
- (c) Removal by City: If the City has provided Notice to Remove under subsection (b) above, and property owner fails and/or refuses to take advantage of any graffiti removal program available through the City, as well as fails or refuses to remove or effectively obscure graffiti upon property owner's property, the City may, after compliance with the requirements contained herein below, go upon the private property and remove the graffiti at the expense of the property owner. The City shall not clean, paint or obscure or repair any property containing graffiti more extensively than where the graffiti itself is located. The City shall not be required to restore the area that contained graffiti, or any obscured area, to its original condition including conditions of color, texture, and finish. Provided however, nothing herein, shall require the City to remove graffiti from private property or from property designated as historic property under federal or state laws.

### **Sec. 10-113. Right of entry to private property.**

Prior to entering upon private property or property owned by a public entity other than the City for the purpose of graffiti removal, the City shall attempt to secure the consent of the property owner and a release of the City from any and all claims arising out of the removal. If the property owner fails to remove the graffiti within the time specified in the Notice to Remove, or if the City has requested consent to remove or paint over the graffiti and the property owner has refused consent and/or refuse to grant the City a release of liability, the City may seek remedies as set forth in N.C.G.S. §160A-175, including injunctive relief, an order of abatement or other relief in the appropriate court of

law. Provided however, nothing herein shall prevent the City from summarily removing graffiti when there is an imminent threat to life or property. The cost of obtaining compliance with the requirements of this Article shall be a lien in accordance with N.C.G.S. §160A-193.

#### **Sec. 10-114. Appeals.**

Any Property Owner who receives a Notice to remove may appeal the Notice within seven (7) business days of receipt to a City Manager Appeals Review Committee, (herein "Committee"), made up of department directors/designees appointed from time to time by the City Manager. The appeal shall be in writing and shall state with specificity the reasons for the appeal ("Appeal Notice"). The Committee shall hold a meeting within ten (10) days of receipt of the Appeal Notice, and shall render a decision within a reasonable time after the hearing date. The Committee shall have the authority to affirm, modify or reverse the decision from which an appeal was taken, with the final decision vested in the City Manager. The City shall not remove or obscure any graffiti during the pendency of an appeal

#### **Sec. 10-115. Enforcement/Remedies.**

##### *(a) Civil Penalties – Against Perpetrator.*

(1) In addition to the graffiti perpetrator being subject to criminal prosecution under the laws of the State of North Carolina, the perpetrator shall also be subject to the assessment of a civil penalty under the provisions of this Article. The graffiti perpetrator, who violates this Article, shall be subject to a civil penalty in the amount of \$200.00. In the event there is more than one violation within any 30 day period, then the civil penalty shall be increased for each additional violation as set forth below. The date of the first violation shall establish the beginning date for the initial 30 day period. The next violation within that 30-day period shall be considered the second violation. Any violations that follow within that 30-day period shall be numbered sequentially. The penalty shall be as follows:

- (i) Second violation within same 30-day period: \$250.00;
- (ii) Third violation within same 30-day period: \$500.00;
- (iii) Fourth violation within same 30-day period: \$750.00;
- (iv) Fifth and any subsequent violation within same 30-day period: \$1,000.00

(2) Once the 30-day period has run from the "first violation," the next violation shall be considered to be a first violation for the purposes of establishing a new 30-day period. Each subsequent violation that follows more than 30 days from the previous first violation shall be a new first violation for the purpose of establishing a new 30-day period. In the event there are more than six violations within any 12-month period, then each violation after six shall subject the violator(s) to a civil penalty of \$1,000.00. All appeals will be handled in accordance with Section 10-114 above.

##### *(b) Notice of violation:*

(1) Against the perpetrator: Whenever any City official charged with the duty of enforcing the regulations in this Article has reasonable cause to believe that a person has violated any

of the provisions herein, that official shall notify the violator of the violation and assess the civil penalty set forth hereinabove. The violator shall have seven (7) days to pay the civil penalty or file a notice of appeal with the Committee referenced in this Article. Failure to pay any assessed civil penalty shall subject the violator to the equitable remedies set forth in N.C.G.S. §160A-175.

- (2) *Against the property owner.* Whenever any City official charged with the duty of enforcing the regulations in this Article has reasonable cause to believe that a property owner has failed and refused to remove graffiti from the property owner's property, that official shall notify the property owner of the violation, providing up to seven (7) days to correct the violation. Upon failure to comply with violation notice or file an appeal with the Committee referenced in this Article, the violator will be subject to injunctive relief and/or an order of abatement as set forth in N.C.G.S. §160A-175.

**Section 2.** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**Section 3.** All ordinances or parts of ordinances in conflict are hereby repealed to the extent of such conflict.

**Section 4.** Section 10-115, as it applies solely to the perpetrator, shall become effective upon adoption of this ordinance.

**Section 5:** With the exception of section 1-115, as it applies solely to the perpetrator, all remaining provisions of this ordinance shall become effective on October 1, 2014.

Read, approved and adopted this 22nd day of April, 2014.

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CITY CLERK

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MAYOR

Approved as to form:

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CITY ATTORNEY