

ORDINANCE NO. 1210

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON; RELATING TO PROHIBITION AND REMOVAL OF GRAFFITI; ADDING A NEW CHAPTER 9.39--GRAFFITI CONTROL--TO THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, cities are authorized under Titles 35 and 35A RCW to make and enforce by appropriate ordinances all such police and sanitary regulations as are not in conflict with state law; and

WHEREAS, graffiti is vandalism; and

WHEREAS, the defacement of public and private property by graffiti vandals costs businesses, property owners, cities, counties, and the state thousands of dollars a year; and

WHEREAS, the existence of graffiti often becomes an invitation to additional crime; and

WHEREAS, graffiti results in decreased property values, business viability, and community pride; and

WHEREAS, there is substantial evidence that the prompt removal of graffiti is an effective prevention strategy which discourages its return, while the failure to promptly remove graffiti increases the likelihood that more graffiti will occur on the same site and on nearby property; and

WHEREAS, it is necessary to take steps now to protect the public health, safety and welfare of our community from acts of graffiti vandalism and defacement; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new chapter 9.39 is hereby added to the Gig Harbor Municipal Code to read as follows:

CHAPTER 9.39 GRAFFITI CONTROL

Sections:

- 9.39.010 Declaration of policy - findings
- 9.39.020 Definitions
- 9.39.030 Prohibited acts
- 9.39.040 Restitution - community service

9.39.050	Notice of graffiti nuisance
9.39.060	Right of city to remove
9.39.070	Abatement and cost recovery proceedings
9.39.080	Liens
9.39.090	Reward
9.39.100	Remedies not exclusive

9.39.010 Declaration of Policy - Findings.

The City Council finds that graffiti on public and private buildings, structures, and on personal property, including motor vehicles, creates a condition of blight within the City that can result in the deterioration of property values, business opportunities, and enjoyment of life for persons using adjacent and surrounding properties. The City Council further finds that the presence of graffiti is inconsistent with the City's goals of maintaining property, preventing crime, and preserving aesthetic standards. Accordingly, it is the purpose of this chapter to promote the health, safety and welfare of the general public. No provision of this chapter is intended to impose any duty whatsoever upon the City or any of its officers or employees. Further, nothing contained in this chapter is intended or shall be construed as forming the basis of any liability on the part of the City, its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees or agents.

9.39.020 Definitions.

The definitions set forth in this Section apply throughout this chapter.

A. "Graffiti" means any unauthorized inscription, word, figure, painting, design, label, marking, symbol, or other defacement that is marked, etched, scratched, engraved, drawn, painted, sprayed, or otherwise affixed on any surface of public or private property, either natural or manmade; to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is deemed a public nuisance. The owner or occupant cannot authorize a public nuisance.

B. "Graffiti implement" means any aerosol paint container, felt tip marker, graffiti stick or paint stick, gum label, brush, roller, or etching tool or any other device capable of scarring or marking any surface, including but not limited to glass, metal, concrete, or wood; and any piece, design, or scrapbook or drawings illustrating graffiti marks or signs.

9.39.030 Prohibited acts.

A. Defacement. It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any City-owned property or, without the permission of the owner or occupant, on any non-City-owned property.

B. Possession of Graffiti Implements.

1. By Minors at or Near School Facilities. It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or

structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provisions of this section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers. Otherwise, it shall be an affirmative defense to prosecution under this subsection for the minor student to establish the need to possess a broad-tipped marker.

2. In Designated Public Places. It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the City or while on, in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or city signs unless otherwise authorized by the City.

C. Penalties. Any person violating any provisions of this section shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished as provided in GHMC 1.16.010. In the case of a minor, the parent or guardian having custody of the juvenile shall be jointly and severally liable with the minor for the payment of all fines and/or restitution imposed as the result of a violation of this section, except that liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for an unemancipated minor pursuant to court order or the department of social and health services.

9.39.040 Restitution - Community Service.

A. In addition to any punishment specified in this ordinance, the court may order any violator to make restitution to the victim for damages or loss caused by the violator's offense in the amount or manner determined by the court. For purposes of this Section, if the City uses its funds and/or other resources to remove graffiti from city-owned property or, in agreement with the owner, from non-city owned property, the City shall be considered a victim for purposes of restitution.

B. In lieu of, or as part of, the penalties specified in this ordinance, a violator may be required to perform community service as described by the court based on the following minimum requirements:

1. If the court wishes to impose community service in lieu of other penalties provided herein, the violator shall be ordered to perform at least 30 hours of community service; and

2. The entire period of community service shall be performed under the supervision of a community service provider approved by the Chief of Police or his designee; and

3. Reasonable effort shall be made to assign the violator to a type of community service that is reasonably expected to have the most rehabilitative effect on the violator, such as ,community service that involves graffiti removal.

9.39.050 Notice of graffiti nuisance.

A. When the City has reason to believe that a property within the City may be a potential graffiti nuisance property, the City shall identify a responsible party and send that party an informational letter describing the nature and location of the graffiti and requesting that the graffiti be removed promptly. The letter shall explain the problems caused by the continued presence of graffiti and the need for its prompt removal, describe the resources available to aid in graffiti removal, and give notice that failure to remove graffiti is a violation of City code that may lead to legal action to remove the graffiti at the expense of the responsible party and may subject the responsible party to civil penalties. The letter may also identify any graffiti removal assistance programs available through the City, or any private graffiti removal contractors.

B. If the graffiti is not removed within ten (10) days after the information letter has been sent, the City shall notify the responsible party in writing, by certified mail, that the property has been identified as a potential graffiti nuisance property. The notice shall contain the following information:

1. The street address and legal description of the property sufficient for identification of the property;
2. A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding; and
3. A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the City may declare the property to be a public nuisance, subject to the abatement procedures herein.

9.39.060 Right of city to remove.

A. Use of Public Funds. Whenever the City becomes aware 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 for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the City determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area. Pursuant to GHMC 9.39.070 and GHMC 9.39.080, the City shall recover public funds expended to remove graffiti from private property.

B. Right of Entry on 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 or responsible party and a release of the City from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this ordinance, or if the City has requested consent to remove or paint over the

offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the terms of this section, the City shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

9.39.070 Abatement and cost recovery proceedings.

A. Notice of Due Process Hearing. The City, the applicable director, or a designee thereof, shall provide the property owner of record and the party responsible for the maintenance of the property, if a person different from the owner, not less than forty-eight (48) hours notice of the City's intent to hold a due process hearing at which the property owner and or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance. The property owner and the party responsible for the maintenance of the property shall be deemed served with notice three days after the same is sent to the property and to the address shown on the County tax roll as the owner of said property by certified US mail.

B. Determination of Hearing Examiner. If, after the due process hearing, regardless of the attendance of the owner or the responsible party, the Hearing Examiner determines that the property contains graffiti viewable from a public or quasi-public place, the Hearing Examiner shall declare the same a nuisance and order the party to whom the notice was issued to abate it. The Hearing Examiner shall issue a decision and order, if necessary, containing the following: findings of fact; conclusions in support of the decision and order; type and method of abatement action required; the date by which said abatement must be completed; and civil penalties to be assessed by the City should appellant fail to comply with the order. Civil penalties shall range from \$25.00 to \$250.00 based on appellant's appearance at the hearing, frequency of offense, cooperation with the City in efforts to abate the graffiti, progress in abating the graffiti, and other relevant factors. Each and every day or portion thereof during which any violation is committed, continued, permitted or not corrected shall be a violation for purposes of this chapter. The determination of the Hearing Examiner after the due process hearing shall be final, subject to appeal to the City Council. Appeals to the City Council must be filed with the city clerk in writing within ten days of the Hearing Examiner's decision. The Hearing Examiner's decision shall be stayed pending resolution of the City Council appeal.

C. Abatement. The City may, pursuant to chapter 7.48 RCW, obtain a warrant of abatement to enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the court), or such other eradication thereof as the court determines appropriate, and shall provide the property owner, or building owners association, thereafter with an accounting of the costs of the eradication effort on a full cost recovery basis including reasonable legal fees and costs.

9.39.080 Liens.

The City shall have a lien for any civil penalty imposed and for the cost of

any abatement and graffiti removal work done pursuant to this chapter against the real property that is subject to the abatement or graffiti removal under this chapter. The procedures for liens shall be the same as those for public nuisances set forth in GHMC 8.10.150.

9.39.090 Reward.

The City may offer a reward not to exceed three hundred dollars for information leading to the identification, apprehension and charging of any person who willfully damages or destroys any public or private property by the use of graffiti. The actual amount awarded (not to exceed \$300) shall be determined in the discretion of the Chief of Police. In the event of damage to public property, the offender or the parents of any unemancipated minor must reimburse the City for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate. Claims for rewards under this section shall be filed with the Chief of Police or his/her designee in the manner specified by the Gig Harbor Police Department. No claim for a reward shall be allowed unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.

9.39.100 Remedies not exclusive.

The remedies for violation of this chapter that are set forth in this chapter are in addition to any other remedy that may exist at law or in equity.

Section 2. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 3. Effective Date. This Ordinance shall be published and shall take effect and be in full force five (5) days after the date of publication.

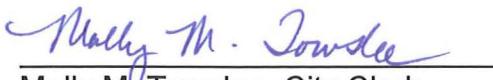
PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 23rd day of May, 2011.

CITY OF GIG HARBOR



Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:



Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela Belbeck
Angela S. Belbeck

FILED WITH THE CITY CLERK: 05/04/11
PASSED BY THE CITY COUNCIL: 05/23/11
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ORDINANCE NO: 1210