

CITY OF SEQUIM ORDINANCE #2007-015

AN ORDINANCE OF THE CITY OF SEQUIM, WASHINGTON, ADDING A CHAPTER TO TITLE 8 OF THE SEQUIM MUNICIPAL CODE RELATING TO GRAFFITI AND NUISANCES; AND PROVIDING FOR SEVERABILITY

WHEREAS, graffiti has long been associated with criminal conduct, by its very nature it is the crime of malicious mischief under state law. Graffiti in recent times has been associated with criminal gang activity and other organized criminal activity; and,

WHEREAS, Sequim has seen a growing potential for illegal graffiti in recent years. The surrounding area around Clallam County has seen a growing trend in graffiti, some criminal in nature and some associated with gang activity; and,

WHEREAS, the removal and control of graffiti is essential to taking a proactive stance to prevent, not just this crime, but the breeding ground for other criminal activity. The 'Broken Windows Theory of Crime Prevention' has long held that if minor criminal offenses such as graffiti are allowed to fester unchecked, that other criminal conduct will follow; and,

WHEREAS, the focus of this ordinance, which has become a commonly enacted law across the United States as graffiti has risen in recent years, is to establish a process to quickly remove graffiti from the community whenever it appears. This ordinance provides for proper notification, appeal and removal processes that have been tried and tested in other communities; and,

WHEREAS, this ordinance is dealing with a public emergency and is necessary for the protection of public health, public safety, public property or the public peace;

THEREFORE THE CITY COUNCIL OF THE CITY OF SEQUIM, IN REGULAR SESSION ASSEMBLED, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 8.07 of the Sequim Municipal Code is hereby CREATED to read as follows:

8.07 GRAFFITI CONTROL

SECTION HEADINGS Chapter 8.07

- (.010) Intent and Purpose
- (.020) Definitions
- (.030) Prohibition of Graffiti
- (.040) Possession by Minors
- (.050) Removal of Graffiti
- (.060) City costs enforceable – Debt – Lien
- (.070) Appeal

- (.080) Removal by City
- (.090) Reward
- (.100) Penalty
- (.110) Administrative Fee

8.07.010 INTENT AND PURPOSE

(1) The City of Sequim may provide for the removal of graffiti and other inscribed material from public and privately owned permanent structures located on public or privately owned real property within the City of Sequim. The City of Sequim finds that graffiti on public and privately owned property is obnoxious in that it furthers blight, encourages acts of vandalism and related criminal conduct, depreciates the value of surrounding properties, and is inconsistent with the City's property maintenance goals and aesthetic standards.

(2) The City further finds and determines that unless graffiti is quickly removed; other properties soon become the target of graffiti. The existence of graffiti tends to begin community discontent and contempt for the law as well as encourages other criminal conduct and actions by criminal organizations and gangs.

(8.07.020) DEFINITIONS

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section:

- (1) **"Gang"** means a group of three or more individuals with a common interest or bond and engaging in activity specifically characterized by an intent to commit criminal acts.
- (2) **"Graffiti or other inscription"** shall mean any unauthorized inscription, word, figure or design that is indelibly marked, etched, scratched, drawn or painted on any building, structure or other facility, regardless of the nature of the material of that component, structure or facility.
- (3) **"Graffiti vandalism"** means unpermitted defacement of public or private property by means of painting, drawing, writing, etching, or carving, by use of paint, spray paint, ink, knife, or any similar method. Graffiti means one or more letters, symbols, or other markings painted, drawn or otherwise applied to a wall, post, column, or other building or structure, or to a tree, or other exterior surface, publicly or privately owned.
- (4) **"Graffiti Implements"** shall mean any can, bottle, spray device or other mechanism designed to propel liquid which contains ink, paint, dye or other similar substance which is expelled under pressure, either through the use of aerosol devices, pumps, or similar propulsion devices. Additionally, the definition also includes indelible marker(s) which is any marker, pen or similar implement containing

anything other than a solution which can be removed with water after it dries and having a flat, pointed or angled writing surface of a width of 4 millimeters or greater when possessed in a location and manner described in Subsection (D).

(5) "Responsible adult" shall mean the parent or legal guardian of a minor under the age of eighteen (18) years.

(8.07.030) PROHIBITION OF GRAFFITI

(1) It shall be unlawful for any person to apply graffiti or other inscription upon any wall, street, sidewalk, bridge, building, fence, gate, structure, signs or other facility within the City of Sequim.

(2) Persons convicted of violating this section, in addition to any other penalties imposed by this code, shall pay restitution to the property owner. If the violator is a minor, the parent or guardian shall be responsible for the payment of restitution within the limits of liability set forth in any applicable RCW section.

(8.07.040) POSSESSION OF GRAFFITI IMPLEMENTS

It shall be unlawful for any person to possess any graffiti implement while on public or private property without the express consent of the owner of such property, in a manner that warrants a justifiable and reasonable alarm or immediate concern for the safety of property in the vicinity and when such possession is under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a violation of Subsection (C)(1), above, or knowing that the same is intended to be so used. Among the circumstances which may be considered by a police officer in determining whether such alarm or immediate concern is warranted, is the fact that the person takes flight upon appearance of an enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or the graffiti implement. Prior to any formal arrest and/or citation being issued to a person for a violation of this subsection, such person shall be afforded an opportunity by the enforcement officer to dispel any alarm or immediate concern which could otherwise be warranted by requesting such person to explain his lawful presence and conduct.

(8.07.050) REMOVAL OF GRAFFITI

(1) Whenever graffiti exists upon the property owned by another public agency, or a private property owner, the City of Sequim may remove it with the consent of the public entity or private property owner owning said property.

(2) – Notice of removal.

A. Whenever the City Manager, or his/her designated representative, determines that graffiti exists on any public or private buildings, structures, and places which are visible to any person utilizing any public road, parkway, alley, sidewalk or other right-of-way within the City, and when seasonal temperatures permit the painting of exterior surfaces,

the Compliance Officer I or other designated Code Enforcement Officer or his/her designated representative shall cause a notice to be issued to abate such nuisance. The property owner shall have fifteen (15) days after the date of the notice to remove the graffiti or the same will be subject to abatement by the City.

B. The notice to abate graffiti pursuant to this section shall cause a written notice to be served upon the owner(s) of the affected premises, as such owners' name and address appears on the last property tax assessment rolls of Clallam County, Washington. If there is no known address for the owner, the notice shall be sent in care of the property address. The notice required by this section may be served in any one of the following manners:

1. By personal service on the owner, occupant or person in charge or control of the property;

2. By registered or certified mail addressed to the owner at the last known address of said owner. If this address is unknown, the notice will be sent to the property address.

The notice shall be substantially in the following form:

Notice of Intent to Remove Graffiti

Date:

To:

NOTICE IS HEREBY GIVEN that you are required, by Ordinance of the City of Sequim, at your own expense, to remove or paint over the graffiti located on the property commonly known as (address), Sequim, Washington, which is visible to public view, within fifteen (15) days after the date of this notice; or, if you fail to do so, the City may abate the nuisance by removal or painting over of the graffiti. The cost of the abatement by the City or private contractors employed by the City to abate the nuisance will be assessed upon your property and such costs will constitute a lien upon the land until paid.

All persons having any objection to, or interest in said matters, are hereby notified to submit any objections or comments to the Code Enforcement Officer of the City of Sequim or his/her designated representative, within ten (10) days from the date of this notice. If no objections or comments to the notice are received by the City, the City will, at the conclusion of the fifteen (15) day period, proceed with abatement of the graffiti inscribed on you property at your expense without further notice.

(8.07.060) City costs enforceable – Debt – Lien.

Any and all costs incurred by the City in the abatement of the graffiti nuisance as provided in this chapter shall constitute a debt owed to the City by the property owner or person in charge or control of the property, and shall be enforceable as a lien against the property upon which such nuisance existed, in addition to the other legal remedies available for enforcement of debts.

(8.07.070) Appeal.

Within ten (10) days from the mailing or from personal service of the notice of intent to remove graffiti, the owner or person occupying or controlling the premises affected may appeal the matter to the Sequim City Council. Filing of an appeal will stay, during the pendency of the appeal, any enforcement or actions by the City to abate the graffiti nuisance. The City Council may delegate the appeal to an appointed hearing officer whose decision shall be a final decision of the city

(8.07.080) Removal by City.

A. Upon failure of persons to comply with the notice by the designated date, or such continued date thereafter as the City Manager, or his/her designated representative, approves, then the Code Enforcement Officer is authorized and directed to cause the graffiti to be abated by City forces or by private contract, and the City or its private contractor is expressly authorized to enter upon the premises for such purposes. All reasonable efforts to minimize damage from such entry shall be taken by the City, and any paint used to obliterate or cover graffiti shall be as close as practicable to background color(s). If the Code Enforcement Officer provides for the removal of the graffiti, he/she shall not authorize nor undertake to provide for the painting or repair of any more extensive area than the area where the graffiti is located.

B. Property owners in the City of Sequim may consent in advance to City entry onto private property for graffiti removal purposes.

(a) In the event that the owner fails to remove the graffiti after notice has been sent, the City may, at its option, in lieu of the above procedure, abate the graffiti as a nuisance under City Ordinances or state law.

C. The Public Works Department shall be responsible for graffiti removal and will budget appropriately as well as coordinate or contract for such removal using City resources, but which may also include private companies and/or civic organizations.

(8.07.090) REWARD

The City may pay to any person who provides information that leads to the arrest and conviction of any person who applies any drawing, inscription, figure, or mark, commonly known as graffiti, to a surface of real or personal property, a reward.

(8.07.100) PENALTY

(1) The violation of any provision of this chapter may be prosecuted as a violation of RCW 9A.48.090., as applicable or otherwise as a misdemeanor.

(2) If a minor is personally unable to pay any fine or restitution levied for violating any provision of this chapter, the parent or legal guardian shall be liable for the payment of this fine or restitution for any intentional acts by the minor as State law, RCW 4.24.190, may provide for such acts.

(8.07.110) ADMINISTRATIVE FEE

As a part of any abatement, an administrative fee for overhead will be charged against the party responsible for violation of any provision of this chapter above and beyond actual staff time and supplies used to enforcement, prosecute and remove graffiti.

Section 4. Severability: If any section, subsection, or other portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, or portion shall be deemed a separate portion of this Ordinance and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. This ordinance passed by a majority plus one of the whole membership of the council, designated therein as a public emergency ordinance necessary for the protection of public health, public safety, public property or the public peace shall take effect upon adoption.

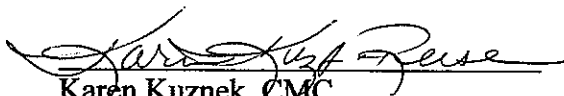
Section 6. Read for the first time and passed by the City Council of the City of Sequim, at a regular meeting thereof, held this 9th day of July, 2007, the second reading having been waived by Council.



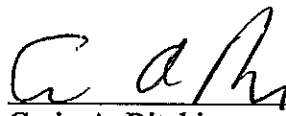
Walter E. Schubert, Mayor

Approved as to Form:

ATTEST:



Karen Kuznek, CMC
City Clerk



Craig A. Ritchie
City Attorney

Date of publication: July 13, 2007

Effective date: July 9, 2007