

ORDINANCE NO. 2021-2227

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, AMENDING SECTIONS 15.01.00, 15.01.01 and 15.01.02 OF CHAPTER 15 OF THE LAND DEVELOPMENT CODE, PERTAINING TO GRAFFITI; PROVIDING FOR A DEFINITION OF COMPLETELY OBSCURE; PROVIDING FOR REMOVAL OF GRAFFITI BY THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the presence of graffiti causes blight throughout the City which invites crime and further destruction of private and public property;

WHEREAS, the quick and effective removal or covering of graffiti can ameliorate the deleterious effects of graffiti on public and private property;

WHEREAS, this ordinance has been reviewed by the Land Development Review Board as required by law;

WHEREAS, notice of this ordinance has been provided as required by applicable law; and

WHEREAS, the New Port Richey City Council finds and it is declared as a matter of legislative determination and public policy that the provisions and prohibitions herein are necessary in the public interest; and it is further declared that the provisions and prohibitions herein are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life in the City in accordance with the City's police powers.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW PORT RICHEY, FLORIDA:

SECTION 1. Section 15.01.00, of Chapter 15, of the New Port Richey Land Development Code, pertaining to the definition of graffiti, is hereby amended, as follows (strikeout text is deleted and underlined text is added):

15.01.00. – Graffiti; Definitions.

Graffiti shall mean any mark, inscription, writing, drawing, painting, scribbling, engraving or other defacement of any type that is written, marked, etched, sprayed, inscribed, drawn, engraved, painted, applied or otherwise affixed directly to the surface of any structure or other property, real or personal, located within the city. The term shall not include signs, other than Free Expression Signs, permitted or allowed under the City's sign regulations as set forth in Chapter 13 of the Land Development Code or murals permitted under Chapter 7 of the Land Development Code.

Completely Obscure shall mean to cover graffiti with paint or other substances sufficient to match the surrounding area of the structure, and the area of the graffiti prior to the application of the

graffiti, in such a manner so as to not allow any part of the graffiti to be observed by the naked eye.

SECTION 2. Section 15.01.01, of Chapter 15, of the New Port Richey Land Development Code, pertaining to the prohibition of graffiti, is hereby amended, as follows (strikeout text is deleted and underlined text is added):

15.01.01. – Graffiti Prohibited; penalties.

- (a) *Violation.* No person shall write, mark, etch, spray, inscribe, draw, engrave, paint, apply or otherwise affix graffiti to any structure or other real or personal property located within the city ~~without the consent of the owner of said property.~~
- (b) *Fines, imprisonment.* Any person violating subsection (a) hereinabove may be punished by a fine of up to two hundred fifty dollars (\$250.00) for the first offense, up to five hundred dollars (\$500.00) for the second offense, and imprisonment in the county jail for a term not to exceed sixty (60) days and a fine of up to five hundred dollars (\$500.00) for the third offense.
- (c) *Restitution.* In addition to any fine, imprisonment and/or community service described herein, the court may order any violator to make restitution, in an amount or manner determined by the court, to the owner of the property for damages or loss caused directly or indirectly by the violator's offense.
- (d) *Community service.* In addition to any fines, imprisonment and/or restitution listed hereinabove, the court may order a violator to perform monitored community service of up to forty (40) hours per offense.
- (e) *Violation by minor.* In the event the violator is a minor, the parent(s) or legal guardian of the minor shall be jointly and severally liable with the minor for payment of any and all fines and restitution ordered to be paid by the court.

SECTION 3. Section 15.01.01, of Chapter 15, of the New Port Richey Land Development Code, pertaining to the removal of graffiti, is hereby amended, as follows (strikeout text is deleted and underlined text is added):

15.01.02. - Removal of graffiti.

- (a) It shall be unlawful for the owner of any structure or other property, real or personal, to permit graffiti to be applied to or remain on any such structure or property located within the city. The owner of any structure or other property located within the city shall be responsible for keeping said property free of graffiti at all times. The owner of the property on which ~~has~~ graffiti has been applied shall immediately remove or completely obscure said graffiti ~~upon being applied on such property.~~ Governmental entities owning property within the city shall be exempt from the provisions contained in this subsection.
- (b) In the event a code enforcement officer of the city finds graffiti on any property located within the city not owned by a governmental entity, ~~said code enforcement officer shall use the normal~~ code enforcement procedures contained in chapter 23 ~~of Appendix A~~ of the City

~~of New Port Richey Land Development Code of Ordinances shall be used in enforcing the provisions of subsection (a) contained hereinabove, including without limitation the providing of a proper notice of violation, a reasonable amount of time to cure any such violation, and a proper notice of a code enforcement board hearing at which such matter shall be scheduled to be heard.~~

- (c) In the event a property owner fails to remove or completely obscure graffiti in accordance with the a-time period set forth in a notice an order to remove from ~~the any~~ city's code enforcement officer board, the city may have the graffiti removed or completely obscured as a public nuisance in accordance with the procedures set forth in Section 15.00.01 of the Land Development Code ~~addition to any fines or fees levied by the city's code enforcement board,~~ a city code enforcement officer shall post said property with a notice to remove, provide a copy of said notice to the city manager, and send a copy of said notice to the last known owner of the property, as stated in the current ad valorem tax records maintained by the Pasco County Tax Collector or the current records maintained by the Pasco County Property Appraiser.
- (d) ~~The aforesaid notice to remove shall contain the following information:~~
- (i) ~~The date of the posting of the notice on the property;~~
 - (ii) ~~The name of the owner of the property containing the graffiti;~~
 - (iii) ~~A legal description of the property containing the graffiti, sufficient to identify said property;~~
 - (iv) ~~A brief statement of the location on the property where the graffiti exists and a concise description of the graffiti;~~
 - (v) ~~A statement that, unless the graffiti is removed prior to the date of a regularly scheduled city council meeting, the owner shall appear before the city council at a regularly scheduled meeting for a hearing before the city council to determine if the owner is in violation of subsection (a) hereinabove, and if found to be in violation, the need for the owner to remove, or cause to be removed, the graffiti within an amount of time to be set by the city council at said hearing;~~
 - (vi) ~~The date, time and place of the regularly scheduled city council meeting at which the hearing will be held;~~
 - (vii) ~~The name, address, telephone number, title and signature of the code enforcement officer providing the notice.~~
- (e) ~~Upon receipt of any notice to remove, the city manager shall place, or caused to be placed on the agenda for a regularly scheduled meeting of the city council, the matter of whether the owner of the cited property is in violation of subsection (a) hereinabove. The city council shall hold a public meeting on the matter and shall provide the owner of the property or the owner's representative with an opportunity to present its case to the city council. Notwithstanding the foregoing, the hearing before the city council shall not operate as an appeal of the decision of the city's code enforcement board. Any fines or fees levied by the city's code enforcement board shall not be eliminated, absolved or excused by a decision of the city council to provide more time for removal of any graffiti.~~

- ~~(f) — If the city council finds the owner to be in violation of subsection (a) hereinabove, then said owner shall remove, or have removed, the graffiti from the property within the time period set by the city council, of which shall be at least three (3) days from the date of the hearing.~~
- ~~(g) — After the date set for removal has elapsed, a city code enforcement officer shall inspect the property found to be in violation to determine whether the graffiti has been removed. If the owner fails to remove the graffiti in accordance with the city council's order to remove, then the city code enforcement officer shall notify the city manager, who shall then instruct the city attorney to immediately begin a lawsuit to petition the Sixth Judicial Circuit Court, Pasco County to order the owner to remove the graffiti from the property. Said lawsuit shall also petition the court to permit the city to enter onto the owner's property to remove, or cause to be removed, the graffiti from the property, if the graffiti is not removed within five (5) days from the court's order, and assess the costs of such removal to the owner of the property.~~
- ~~(h) — The city is entitled to recover all costs that it incurs in the bringing of a lawsuit to enforce the provisions of this section and to remove any graffiti from a property, including, but not limited the following reasonable attorney's fees, service of process, costs of publication of notice or service, costs of supplies and labor in removing the graffiti, and any other amount expended in bringing the violation into compliance.~~
- ~~(i) — If the city removes the graffiti, or causes the graffiti to be removed, it shall send an invoice to the owner of the property for all amounts expended by the city. If said invoice is not paid within thirty (30) days of the date of said invoice, the city may place a lien against the property, and interest shall accrue on said lien at a rate of eight (8) percent per annum.~~
- ~~(j) — Nothing contained herein shall prevent the city from enforcing any judgment or court order in any other manner permitted by law.~~

SECTION 4. If any phrase or portion of this ordinance, or the particular application thereof, shall be held invalid or unconstitutional by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases and their application shall not be affected thereby.

SECTION 5. Any ordinances, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6. It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall be codified and made a part of the New Port Richey City Code, and that the sections of this ordinance may be renumbered to accomplish such codification, and that the word ordinance may be changed to “section” to accomplish such codification.

SECTION 7. This ordinance shall become effective immediately upon its adoption as provided by law.

The above and foregoing ordinance was read and approved on first reading at duly convened meeting of the City Council of the City of New Port Richey, Florida this _____ day of _____, 2021.

The above and foregoing ordinance was read and approved on second reading at duly convened meeting of the City Council of the City of New Port Richey, Florida this _____ day of _____, 2021.

ATTEST:

Judy Meyers, CMC, City Clerk

Rob Marlowe, Mayor-Council Member

APPROVED AS TO FORM

By: _____
Timothy P. Driscoll, City Attorney
CA Approved 1-12-21