

AN ORDINANCE 11-105
ENTITLED
AN ORDINANCE REPEALING CITY
ORDINANCE #98-140; ADOPTING A NEW
COMPREHENSIVE GRAFFITI REMOVAL
PROGRAM; REPEALING PRIOR
ORDINANCES IN CONFLICT AND FOR
OTHER PURPOSES.

WHEREAS, the City adopted in 1998 a graffiti removal program; and

WHEREAS, the Georgia Legislature in Ga. Laws 2003 (codified at O.C.G.A. § 17-15A-1, et seq.) took the position that

“No graffiti removal program operated by any political subdivision of this state shall charge any fee to any property owner or operator for removal of graffiti from such property”; and

WHEREAS, the City desires to apply O.C.G.A. § 17-15A-1, et seq. to its graffiti removal program,

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Albany, Georgia and it is hereby ordained by authority of same:

SECTION 1. Ordinance #98-140 is hereby repealed in its present form.

SECTION 2. Sec. 38-127 of the Code of Ordinances of the City of Albany, Georgia, hereinafter shall read:

(a) *Purpose and intent.* The board of commissioners of the city finds and determines that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Graffiti promotes blight in the neighborhoods in which it occurs and encourages similar acts of vandalism. Without prompt and immediate removal of graffiti, other properties become the target of graffiti and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city and its citizens. The board of commissioners of the city, in the interest of public health, safety and welfare further finds and declares that to be truly effective in the deterrence, eradication and removal of graffiti, it is necessary to implement a comprehensive anti-graffiti ordinance.

(b) The definition of “graffiti” in O.C.G.A. § 17-15A-2, as may be hereinafter amended

is adopted and specifically incorporated: Any inscriptions, words, figures, paintings, or other defacements that are written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of real property or improvements thereon without prior authorization of the owner or occupant of the property by means of any aerosol paint container, broad-tipped marker, gum label, paint stick, graffiti stick, etching equipment, brush, or other device capable of scarring or leaving a visible mark on any surface.

- (c) *Prohibited acts.* It shall be unlawful for any person(s) to deface, destroy or otherwise damage private or public property without the owner's consent by or through the application of "graffiti".
- (d) *Graffiti Penalty.* Any person who is convicted of violating subsection (c) above shall be punished by a fine of not exceeding five hundred and no/100 dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both. In addition to such punishment, the court may, in imposing sentence, order the defendant to restore the property so defaced, damaged or destroyed.
- (e) *Notice of Removal.* The property owner, manager or agent, whether the property is privately or publicly owned, is obligated to remove any graffiti from the property within a five (5) day of notice. Whenever the City becomes aware of the existence of graffiti on any property, including structures or improvements, a police officer or code enforcement officer shall give or cause to be given, a five (5) day notice to the property owner and/or owner's agent or manager to remove such graffiti. Such notice shall be in writing and have substantially the following form:

NOTICE TO REMOVE GRAFFITI

To the Owner, Agent of the Owner, or Person managing the property hereinafter described: [insert address]

Reference is made to the City's graffiti removal program—City Ordinance #11-____

It has been determined that the improvements/structures at this property contain graffiti which injures neighboring property and the public health, safety and welfare. You are directed to remove the graffiti within ____ days of this notice.

In the event you fail to remove the graffiti within the requested ____ days, you will leave the City no alternative but to cause the graffiti to be removed.

Dated at Albany, Georgia this ____ day of _____, 20 ____.

Officer

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 as depicted on the Dougherty County tax digest.

SECTION 3. The use by the City of inmate labor [O.C.G.A. § 17-15A-4] is authorized.

SECTION 4. Any removal of graffiti is a discretionary function for purposes of official and sovereign immunity and the immunity of the City nor its employees is waived.

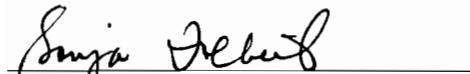
SECTION 5. This Ordinance shall become effective immediately.

SECTION 6. Severability. Any provision of this Ordinance which is held by a court of competent jurisdiction to be prohibited or unenforceable shall not invalidate or render unenforceable the remaining portions of this Ordinance.

SECTION 7. All Ordinances, or parts of Ordinances, in conflict herewith are repealed.


MAYOR

ATTEST:


CITY CLERK

Adopted: *April 26, 2011*

Introduced By Commissioner: *Jon Howard*
Date(s) read: *April 26, 2011*

**CITY OF ALBANY
CITY COMMISSION AGENDA ITEM**

Date: March 25, 2011
Meeting Date: April 5, 2011
Subject/Title: Graffiti Ordinance
Presented for: Decision X Information
Co-Presenters: Judy Bowles, KADB Executive Director
Nathan Davis, City Attorney

Statement of Issue

Amend the Graffiti Ordinance to provide timely removal of graffiti.

History/Facts and Issues

On September 8, 1988 the City Commission adopted a Graffiti Ordinance (#98-140) which states that: Graffiti is unlawful, convicted graffiti vandals shall be fined up to \$500 and/or imprisoned up to 6 months and can be required to restore the property. Property owners are required to remove graffiti within 30 days after written notification. If the agent/owner fails to remove the graffiti within 30 days the City has the authority to remove the graffiti at the owner's expense. If the owner does not reimburse the City for cost incurred a lien may be placed on said property. The original presentation by the then APD Police Chief Bobby Johnson and the KADB Executive Director Judy Bowles included a 7-day removal recommendation.

OCGA 17-15A-1 et. seq. guarantees a property owner that there will not be a charge/fee against the property for removal of graffiti: "No graffiti removal program operated by any political subdivision of this state shall charge any fee to any property owner or operator for removal of graffiti from such property" 17-15A-4(b). This state law did not exist when the City first initiated a graffiti removal program. The City Attorney's Office has redrawn our graffiti ordinance to include the effect of this state law. A copy is attached.

FACTS/ISSUE

Graffiti promotes blight, encourages similar acts of vandalism, transforms a property owner into a victim, projects our community as unsafe, devalues property and it is unlawful. Graffiti needs to be removed as quickly as possible.

Historically, the largest amount of graffiti has been removed from government property.

OPTIONS:

Option (1)

- Adopt the new ordinance and retain the 30 days as removal deadline.

(Pros) Option (1)

- None other than it uses the “old” deadline.

(Cons) Option (1)

- The visual blight will be viewed for a full month encouraging others to add to the graffiti.
- The area will be portrayed as unsafe for 30 days.

Option (2)

- Adopt the new ordinance and establish a 10-day removal mandate.

(Pros) Option (2)

- Quick removal sends a message to taggers that graffiti is unacceptable in Albany.
- Quick removal portrays enforcement as actively working to make the community safe
- Quick removal is essential to the City’s positive visual image

(Cons) Option (2)

- This is a significant departure from existing practice. Government and property owners will have 10 days to paint over graffiti

Option (3)

- Adopt the new ordinance and establish a 5-day removal deadline.

(Pros) Option (3)

- Quick removal sends a message to taggers that graffiti will not be tolerated.
- The blight will have a short life span mirroring Smyrna and Savannah’s ordinance.
- Removing graffiti as quickly as possible is the recommendation of all graffiti education materials, manuals and experts.
- Expedient removal undergirds the perception of a safe community.
- Immediate removal sends a positive message to citizens and visitors.

(Cons) Option (3)

Same as Option 2 above.

Recommended Action:

The recommendation is to approve and implement Option 3

Fiscal Impact/Funding Sources

Labor costs. When volunteer labor is used, there are no labor costs. If inmate labor is used, there is an indirect cost associated with the City employee(s) who will supervise the inmates.

Material and other costs. Currently, KADB struggles to underwrite the cost of materials and supplies. A budget item is being requested during the budget development process. If volunteers are used to remove graffiti, there are no transportation costs. If inmate labor is used, there is an indirect cost associated with the use of a City vehicle to transport prisoners.



Dept./Division Director



City Manager

Attachment:

Draft Proposed Ordinance

For information, please contact: Judy Bowles, 430-5257

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AN ORDINANCE REPEALING CITY
ORDINANCE #98-140; ADOPTING A NEW
COMPREHENSIVE GRAFFITI REMOVAL
PROGRAM; REPEALING PRIOR
ORDINANCES IN CONFLICT AND FOR
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WHEREAS, the City adopted in 1998 a graffiti removal program; and

WHEREAS, the Georgia Legislature in Ga. Laws 2003 (codified at O.C.G.A. § 17-15A-1, et seq.) took the position that

“No graffiti removal program operated by any political subdivision of this state shall charge any fee to any property owner or operator for removal of graffiti from such property”; and

WHEREAS, the City desires to apply O.C.G.A. § 17-15A-1, et seq. to its graffiti removal program,

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Albany, Georgia and it is hereby ordained by authority of same:

SECTION 1. Ordinance #98-140 is hereby repealed in its present form.

SECTION 2. Sec. 38-127 of the Code of Ordinances of the City of Albany, Georgia, hereinafter shall read:

- (a) *Purpose and intent.* The board of commissioners of the city finds and determines that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Graffiti promotes blight in the neighborhoods in which it occurs and encourages similar acts of vandalism. Without prompt and immediate removal of graffiti, other properties become the target of graffiti and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city and its citizens. The board of commissioners of the city, in the interest of public health, safety and welfare further finds and declares that to be truly effective in the deterrence, eradication and removal of graffiti, it is necessary to implement a comprehensive anti-graffiti ordinance.

- (b) The definition of "graffiti" in O.C.G.A. § 17-15A-2, as may be hereinafter amended is adopted and specifically incorporated: Any inscriptions, words, figures, paintings, or other defacements that are written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of real property or improvements thereon without prior authorization of the owner or occupant of the property by means of any aerosol paint container, broad-tipped marker, gum label, paint stick, graffiti stick, etching equipment, brush, or other device capable of scarring or leaving a visible mark on any surface.
- (c) *Prohibited acts.* It shall be unlawful for any person(s) to deface, destroy or otherwise damage private or public property without the owner's consent by or through the application of "graffiti".
- (d) *Graffiti Penalty.* Any person who is convicted of violating subsection (c) above shall be punished by a fine of not exceeding five hundred and no dollars (\$500.00) or by imprisonment not to exceed six (6) months or both. In addition to such punishment, the court may, in imposing sentence, order the defendant to restore the property so defaced, damaged or destroyed.
- (e) *Notice of Removal.* The property owner, manager or agent, whether the property is privately or publicly owned, shall be obligated to remove any graffiti from the property within _____ notice. Whenever the City becomes aware of the existence of graffiti on any property, including structures or improvements, a police officer or code enforcement officer shall give, because to be given, a _____ day notice to the property owner and/or owner's agent or manager to remove such graffiti. Such notice shall be in writing and substantially in the following form:

NOTICE TO REMOVE GRAFFITI

To the Owner, Agent of the Owner, or Person managing the property hereinafter described: [insert address]

Reference is made to the City's graffiti removal program—City Ordinance #11-_____

It has been determined that the improvements/structures at this property contain graffiti which injures neighboring property and the public health, safety and welfare. You are directed to remove the graffiti within _____ days of this notice.

In the event you fail to remove the graffiti within the requested _____ days, you will leave the City no alternative but to cause the graffiti to be removed.

Dated at Albany, Georgia this _____ day of _____, 20 _____.

E.

Officer

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 as depicted on the Dougherty County tax digest.

SECTION 3. The use by the City of inmate labor [O.C.G.A. § 17-15A-4] is authorized.

SECTION 4. This Ordinance shall become effective immediately.

SECTION 5. Severability. Any provision of this Ordinance which is held by a court of competent jurisdiction to be prohibited or unenforceable shall not invalidate or render unenforceable the remaining portions of this Ordinance.

SECTION 6. All Ordinances, or parts of Ordinances, in conflict herewith are repealed.

MAYOR

ATTE

CITY CLERK

Adopted:

Introduced By Commissioner: _____

Date(s) read: _____

AN ORDINANCE *98-140*
ENTITLED
AN ORDINANCE PROHIBITING GRAFFITI AND
PROVIDING FOR ERADICATION,
ENFORCEMENT AND PENALTIES;
REPEALING PRIOR ORDINANCES IN
CONFLICT AND FOR OTHER PURPOSES.

BE IT ORDAINED by the Board of Commissioners of the City of Albany, Georgia and it is hereby ordained by authority of same:

SECTION 1. Purpose and Intent. The Board of Commissioners of the City of Albany, Georgia finds and determines that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Graffiti promotes blight in the neighborhoods in which it occurs and encourages similar acts of vandalism. Without prompt and immediate removal of graffiti, other properties become the target of graffiti and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City and its citizens.

The Board of Commissioners of the City of Albany, Georgia, in the interest of public health, safety and welfare further finds and declares that to be truly effective in the deterrence, eradication and removal of graffiti, it is necessary to implement a comprehensive anti-graffiti ordinance.

SECTION 2. Definition. "Graffiti" means the defacing, damaging or destroying by spraying of paint, or marking of ink, chalk, dye or other similar substances on public and/or private buildings, structures and places.

SECTION 3. Prohibited Acts. It shall be unlawful for any person(s) to deface, destroy or otherwise damage private or public property without the owner's consent by or

through the application of what is commonly known as "graffiti".

It shall be unlawful for any person owning or otherwise being in control of any real property within the City of Albany to maintain, permit or allow any graffiti to be placed upon or remain upon any structure located on such property when the graffiti is visible from the street or other public or private property.

SECTION 4. Graffiti Penalty. Any person who is convicted of violating Section 3 of this Ordinance shall be punished by a fine of not exceeding five hundred and no/100 dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both such fine and imprisonment. In addition to such punishment, the court may, in imposing sentence, order the defendant to restore the property so defaced, damaged or destroyed.

SECTION 5. Graffiti Notice of Removal. It shall be unlawful for any person, firm, public agency or utility owner, or acting as manager or agent for the owner of property, whether privately or publicly owned, to permit the application of or fail to remove any graffiti from the property within thirty (30) days of receipt of notice from the City to remove such graffiti.

Whenever the City becomes aware of the existence of graffiti or other unsightly conditions on any property, including structures or improvements within the City, a police officer or code enforcement officer shall give or cause to be given, notice to the property owner, and/or owner's agent or manager to remove such graffiti or other unsightly condition therefrom. Such notice shall be in writing and have substantially the following form:

NOTICE TO REMOVE GRAFFITI OR OTHER UNSIGHTLY
CONDITION FROM PROPERTY

To the Owner, Agent of the Owner, or Person managing the property hereinafter described:

Your attention is hereby directed to the provisions of Section 3 of Ordinance Number _____ on file in the office of the City Clerk in the Government Center.

Pursuant thereto, you are hereby notified that a certain unsightly condition exists on premises specifically described as _____ which injures neighboring property and the public health, safety and welfare. You are therefore notified at once, and in any event within thirty (30) days from the date of this notice, to remove such unsightly condition from the property and thereafter to keep the property free therefrom.

In the event you fail to complete such work within the time hereinabove mentioned, the undersigned shall cause the same to be removed. The costs of removal may be assessed upon your property and such costs will constitute a lien upon the land until paid.

Dated at Albany, Georgia this _____ day of _____, 19____.

Officer

The notice required by this section may be served in any one of the following manners:

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

SECTION 6. City Cost Declared Lien. If the person, agent, firm, public agency, manager, or owner of the property fails to remove the graffiti by the end of the thirty (30) day notification period, the City of Albany shall cause the graffiti to be removed and charge

to the property owner the expenses incurred. If the expenses of the removal remain unpaid for a period of sixty (60) days, the City of Albany may place a lien against the property upon which said nuisance existed and from which the graffiti was removed.


SECTION 7. This Ordinance shall become effective immediately.

SECTION 8. Severability. Any provision of this Ordinance which is held by Court of competent jurisdiction to be prohibited or unenforceable shall be ineffective to the extent that such prohibition or unenforceability, without invalidating or rendering unenforceable the remaining portions of this Ordinance.

SECTION 9. All Ordinances, or parts of Ordinances, in conflict herewith are repealed.

ATTEST:


CITY CLERK


MAYOR

Adopted: August 25, 1998
Adopted: September 8, 1998