

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PFLUGERVILLE TEXAS AMENDING PROVISIONS OF CHAPTER 130 ENTITLED OFFENSES AGAINST CITY REGULATIONS; SECTION 130.08 ENTITLED GRAFFITI; REVISING NOTICE REQUIREMENTS; PROVIDING FOR EXCEPTIONS FROM ENFORCEMENT; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; REPEALING ALL ORDINANCES TO THE EXTENT THEY ARE IN CONFLICT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City of Pflugerville desires to continue to protect and ensure the public health, safety, and welfare of its residents and businesses by regulating graffiti; and,

WHEREAS, the City of Pflugerville has determined that the existence of graffiti is detrimental to the safety and welfare of the public and tends to reduce property values; and

WHEREAS, it is the intent of this Ordinance to facilitate compliance with state law regarding the abatement of graffiti; and,

WHEREAS, the City Council desires to amend its regulations governing the graffiti notice requirements and exemptions to establish enforcement consistent with Texas law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

SECTION 1. Finding of Fact.

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION 2. Chapter 130, Section 130.08, Graffiti, is hereby amended and restated to read as follows:

§ 130.08 GRAFFITI.

(4) Failure by Property Owner to Remove Graffiti. Failure by a Property Owner to cover or remove graffiti on the Property Owner's property visible from public property or right-of-way shall constitute a violation of this section, subject to the following:

(a) Notice of Graffiti Removal by City. Prior to any enforcement efforts by the city, the Director shall inform the property owner that the city will remove the graffiti from the owner's property free of charge if the owner provides written consent for the removal and releases the city, its contractors, and/or

volunteer personnel from liability in the performance of the graffiti abatement by completing a permission and waiver form. Notice of graffiti removal shall be delivered by regular and certified mail addressed to the property owner. If the United States Postal Service returns the notice as "refused" or "unclaimed," or the property owner fails to respond to the city's request for written permission to remove the graffiti within ten (10) days of the date such request is mailed, the property owner will be deemed to have refused the offer.

(b) Notice to Abate Graffiti. After notice of graffiti removal by city and prior to prosecution for an offense under section (B)(4), the Director shall deliver written notice of the offense to the Property Owner providing the Property Owner with thirty (30) days from delivery of the notice to comply. Such notice may be served by personal delivery or certified mail, return receipt requested, addressed to the Property Owner at the Property Owner's address shown on the tax rolls. Alternatively, if the Property Owner's address is unavailable or the notice is returned as undeliverable, the Director may issue notice by publication two times within ten consecutive days in a newspaper of general publication in the city, by posting the notice on or near the front door of each building on the property, or by posting the notice on a sign staked to the ground on the property if there is no building on the property.

(c) The 30-day period begins the day the notice is personally served on the Property Owner, or the day after the notice is mailed by certified mail, or the day after completion of an alternative method of notice under subsection (b) above, as applicable.

(D) Exclusions. The provisions of section (B) shall not apply to the possession of felt-tip pens or other similar items 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 the felt-tip pens or other similar items, and shall not apply to a Minor who is accompanied by a Parent, or who is in school or on school grounds during school hours or otherwise in the course and scope of supervised school-related activities.

(E) Exceptions. This section shall not apply to graffiti located on transportation infrastructure or in cases in which the removal of the graffiti would create a hazard for the person performing the removal.

(F) Miscellaneous. If the Director denies a Property Owner's request for authorization to apply graffiti on property, the Property Owner may appeal to the City Manager.

(G) Offense, Penalty. Any person who shall violate any of the provisions of this section or fail to comply therewith shall be deemed guilty of a Class C misdemeanor and, upon conviction, shall be fined not less than \$1.00 nor more than \$500.00. This offense is hereby declared to be a strict liability offense and the culpable mental state required by Chapter 6.02 of the Texas Penal Code is hereby specifically negated and clearly dispensed with. Each day that the violation occurs shall constitute a distinct and separate offense.

SECTION 3. Conflicting Ordinances.

All prior ordinances of the City dealing with or applicable to this Ordinance are hereby amended to the extent of any conflict herewith, and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other ordinance of the City, the terms and provisions of this Ordinance shall govern.

SECTION 4. Severability.

Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable. In the event that changes are made to Texas Health & Safety Code §§ 342 or 343 or Local Government Code § 250.006, the provisions of state law will govern in the event of a conflict.

SECTION 5. Effective Date.

This Ordinance will take effect upon its passage and adoption by the City Council in accordance with the provisions of Section 3.15(d) of the City Charter.

PASSED, APPROVED, AND ADOPTED on the _____ day of _____, 2015.

Jeff Coleman, Mayor

ATTEST:

Karen Thompson, City Secretary

APPROVED AS TO FORM:

George Hyde, City Attorney
DENTON, NAVARRO, ROCHA, BERNAL, HYDE & ZECH, P.C.