

CITY OF VON ORMY, TEXAS

ORDINANCE NO: 2010-44

AN ORDINANCE ESTABLISHING GRAFFITI AS A NUISANCE; AMENDING THE CODE OF ORDINANCES OF THE CITY OF VON ORMY, TEXAS; AND PROVIDING A PENALTY FOR THE VIOLATION OF SUCH ORDINANCE AS A MISDEMEANOR PUNISHABLE PURSUANT WITH THE TEXAS HEALTH AND SAFETY CODE SECTION 485, SUBCHAPTERS B-D.

WHEREAS, the City Council of Von Ormy, Texas is enacting this Ordinance to help in the prevention of the spreading of graffiti vandalism and to establish a program for the removal of graffiti from public and private property; and

WHEREAS, the Texas Local Government Code, Section 51.001 (Vernon 2008) authorizes any city incorporated under the general laws of the State of Texas to ordain and establish ordinances as shall be needful for the good of government, peace and order of the municipality that are necessary or proper for carrying out a power granted by law to the Municipality or to an officer or department of the Municipality; and

WHEREAS, the Texas Local Government Code, Section 54.004 authorizes Von Ormy, Texas, a Home Rule municipality, to enact and enforce this Ordinance, to protect the health, life, and property of the municipality and its inhabitants, which also includes defining and declaring what constitutes a nuisance and abate in any manner any nuisance that may injure or affect the public health or comfort of their municipality; and

WHEREAS, the Texas Health & Safety Code, Section 485, *et. seq.* authorizes a political subdivision to impose restrictions, in accordance with this statute, on the access and retail display of spray paint cans, wide-tipped markers and other graffiti implementation devices to protect the health and welfare of the citizens and prevent theft; and

WHEREAS, the Von Ormy City Council finds that graffiti is a public nuisance and is destructive of the rights and values of property owners as well as the entire community. Unless the City acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then 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

WHEREAS, the Von Ormy City Council intends, through the adoption of this Ordinance, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The Council does not intend for this Ordinance to conflict with any existing anti-graffiti state laws; and

WHEREAS, the City of Von Ormy is a Home Rule Municipality organized under the laws of the State of Texas;

- 2.2.2 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 in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the City.

SECTION 3. Accessibility to Graffiti Implementation Devices.

3.1 Furnishing to Minors Prohibited. It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any aerosol paint container, broad-tipped marker, or paint stick to any person under the age of eighteen (18) years without the written consent of the parents or guardian of the person. The provisions of this Section shall not apply to the possession of broad-tipped markers or other graffiti implements 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 or extra curricular activity with their school.

3.2. Permit. Any business establishment selling graffiti implementation devices shall comply with the permitting requirements of Texas Health & Safety Code Section 485, Subchapter B.

3.3. Display and Storage.

3.3.1 Every person who owns, conducts, operates, or manages a retail commercial establishment selling aerosol paint containers, paint sticks, or broad-tipped markers shall store the containers, sticks or markers in an area continuously observable, from a place that is in the line of sight of a cashier or in the line of sight from a workstation, through direct visual observation or surveillance equipment, by employees of the retail establishment during the regular course of business normally continuously occupied during business hours;

3.3.2 In the event that a commercial retail establishment is unable to store the aerosol paint containers, paint sticks, or broad-tipped markers in an area as provided above, the establishment shall store the containers, sticks, and markers in an area not accessible to the public in the regular course of business without employee assistance.

3.4. Signage. In accordance with Texas Health and Safety Code Section 485.017, any business establishment that sells an abusable volatile chemical at retail shall display a conspicuous sign, in English and Spanish, which states the following:

“It is unlawful for a person to sell or deliver an abusable volatile chemical to a person under 18 years of age. Except in limited situations, such an

property owner only upon the City offering to remove the graffiti free of charge and the property owner has refused the offer.

6.2.2. If a property owner refuses removal, the property owner must remove the graffiti on or before the 15th day after the date they receive notice from the City. If the property owner fails to remove the graffiti on or before the 15th day after receipt of notice, the City may remove the graffiti or paint over the graffiti and charge the property owner the expenses for such removal in accordance with the fee schedule adopted by the City. Such removal shall be done in a manner prescribed by the City Marshal as authorized by the City Council. The City shall ensure there is no damage to the property during the removal of the graffiti.

6.2.3 If either the private property owner or the City removes or paints over the graffiti, the paint shall match the existing paint color or a color most similar to the existing paint color on the area with the graffiti so as not to appear inconsistent and patchy.

6.3 Notice. The notice by the City to the property owner shall contain the following information and be served in the following manner:

6.3.1. Notice given in writing personally to the property owner and letter sent by certified mail, addressed to the property owner at the address in the records of the appraisal district where the property is located. If service cannot be accomplished in this manner, the City must serve the property owner by publication at least once in a newspaper of general circulation in the municipality, posting notice on or near the front door of the building and property to be abated or posting notice on a placard to a stake driven into the ground on the property to be abated;

6.3.2. The notice must include the street address and legal description of the property sufficient for identification of the property;

6.3.3. A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding; and

6.3.4 A statement that the graffiti must be removed within fifteen (15) days after receipt of the notice and that if the graffiti is not abated within that time the City will declare the property to be a public nuisance, subject abatement procedures and fees as designated by the City.

