

ORDINANCE NO. 2006-2

**AN ORDINANCE PROVIDING FOR A PROCEDURE FOR REMOVAL OF
GRAFFITI FROM BUILDINGS, WALLS, AND OTHER STRUCTURES**

Chapter 7.80 – Graffiti Nuisance Property

1. Declaration of Purpose.

- 1.1 It is the purpose and intent of this Ordinance to provide for a procedure for removal of graffiti from buildings, walls, and other structures in order to reduce social deterioration within the City of Maywood Park and to promote public safety and health.
- 1.2 The Manager may adopt procedures, forms, and written policies for administering and implementing the provisions of this Chapter.

2. Graffiti Nuisance Property.

- 2.1 Any property, building, or structure within the City of Maywood Park that becomes a graffiti nuisance property is in violation of this Chapter and is subject to its remedies.
- 2.2 Any person who permits property under his or her control to become a graffiti nuisance property shall be in violation of this Chapter and subject to its remedies.

3. Definitions.

For purposes of this Chapter, the following definitions shall apply:

- 3.1 Graffiti: any unauthorized markings of paint, ink, chalk, dye, or other similar substance which is visible from premises open to the public, and that have been placed upon any real or personal property such as buildings, fences, structures, or the unauthorized etching or scratching of such described surfaces where the markings are visible from premises open to the public, such as public rights-of-way or other publicly owned property.
- 3.2 Manager: the Graffiti Abatement Manager is the City Official, or designated representative, who is responsible for the administration of the Graffiti Nuisance Abatement Program under this Chapter. In accordance with adopted procedures, the Manager may appoint such officers, employees, and agents as shall be authorized and necessary to enforce the provisions of this Chapter.
- 3.3 Graffiti Nuisance Property: property upon which graffiti has been placed and such graffiti has been permitted to remain for more than ten (10) days after the

property owner of record has been issued written notification pursuant to Section 4.2.

- 3.4 Occupant: any person or sublessee, successor, or assignee who has control over property.
- 3.5 Owner: any person, agent, firm, or corporation having a legal or equitable interest in a property and includes but is not limited to:
 - 3.5(a) A mortgagor in possession in whom is vested all or part of the legal title to the property or all or part of the beneficial ownership and a right to present use and enjoyment of the premises; or
 - 3.5(b) An occupant who has control over the property/premises.
- 3.6 Permit: knowingly to suffer, allow, or acquiesce by any failure, refusal, or neglect to abate.
- 3.7 Property: any real or personal property and that which is affixed incidental or appurtenant to real property but not limited to any premises, house, building, fence, structure, or any separate part thereof, whether permanent or not.
- 3.8 Unauthorized: without the consent of the owner or the occupant.

4. Procedures.

- 4.1 Required Graffiti Removal: the owner or occupant of any property in the City of Maywood Park shall remove any graffiti from such property within ten (10) days of the graffiti's appearance.
- 4.2 Notification:
 - 4.2(a) Whenever the Manager determines that graffiti exists on any structure in the City of Maywood Park, the Manager may issue an abatement notice.
 - 4.2(b) The Manager shall cause the notice to be served upon the property owner and any occupant. The owner or occupant shall have ten (10) days after the date of service of the notice in which to remove the graffiti. The Graffiti Abatement Manager shall have the sole discretion to grant the property owner the option of giving the City of Maywood Park written permission to enter on the property and remove the graffiti.
 - 4.2(c) Service shall be accomplished by addressing the notice to the owner and occupant and sending it by personal service, registered mail, or certified mail. Service on the occupant may also be accomplished by posting the

notice in a clearly visible location on the subject property.

4.2(d) If graffiti is not removed or written permission is not given to the City of Maywood Park to remove the graffiti, the costs of removal may be assessed to the owner and will become a lien on the affected property. For each instance of graffiti abatement, the Manager shall keep an accurate account of all expenses incurred, including an overhead charge of 25 percent for program administration and a civil penalty of \$250 for each abatement. In the event that the measures taken are deemed by the Code Hearings Officer to be appropriate, the cost for the same may be made as an assessment lien upon the property.

4.3 Appeal:

4.3(a) Within ten (10) days of the receipt of the notice, the property owner or occupant may appeal the notice from the Manager to the Code Hearings Officer of the City of Maywood Park.

4.3(b) Upon receipt of the appeal request, the Code Hearings Officer shall set the matter for hearing within ten (10) business days. If the Code Hearings Officer finds the property to be a graffiti nuisance property, and the owner or responsible party has been given notice in accordance with Subsection 4.2 above, the Code Hearings Officer shall specify when and under what conditions the graffiti shall be abated.

4.4 Removal of Graffiti.

4.4(a) The Manager may summarily abate any graffiti on any utility poles and cabinets, on exterior walls and fences immediately abutting public streets or property, or on any public property, including but not limited to traffic signs and lights.

4.4(b) Whenever the Manager has reasonable cause to believe that there exists upon any building or structure any graffiti requiring abatement under this Chapter, the Manager may enter upon the graffiti nuisance property at all reasonable times to perform any duty imposed on the Manager under this Chapter and to enforce the provisions of this Chapter. Upon the failure to comply with the notice of abatement by the designated compliance date, and if the property owner or occupant has not appealed the notice as provided under Subsection 4.3, the following steps may be taken if the graffiti nuisance property is plainly enclosed to create privacy and prevent access by unauthorized persons:

4.4(b)(1) If the graffiti nuisance property is occupied, the Manager shall first present property credentials and demand entry to cause the graffiti to be abated. If the entry is refused, the

Manager may attempt to secure entry by any legal means.

- 4.4(b)(2) If the graffiti nuisance property is unoccupied, the Manager shall first make a reasonable attempt to locate the owner or occupant and demand entry. Such demand may be included in the initial notice sent to the owner or occupant under Subsection 4.2 above. If entry is refused, the Manager may attempt to secure entry by any legal means:
- (A) If the Manager has first obtained an administrative search warrant to secure entry onto the graffiti nuisance property to abate the graffiti, no owner or occupant shall refuse, fail, or neglect, after proper request, to promptly permit entry by the Manager to abate the graffiti.
 - (B) It shall be unlawful for any owner or occupant to refuse to permit entry by the Manager to abate graffiti under this Chapter after an administrative search warrant has been obtained. Any violation of this Subsection is punishable upon conviction by a fine of not more than \$500 and a jail sentence of up to six months.
- 4.4(b)(3) If the graffiti is not removed and abated, or cause shown, as specified above, the Manager may cause the graffiti to be removed and abated upon issuance of an administrative search warrant.
- (A) Graffiti Abatement. If the graffiti is not removed and abated, or cause shown, as specified above, the Manager may cause the graffiti to be removed and abated.
 - (B) Warrants. The Manager may request any Circuit or Municipal Court Judge to issue a graffiti abatement warrant whenever entry onto private property is necessary to remove and abate any graffiti.
 - (C) Grounds for Issuance of Graffiti Abatement Warrants; Affidavit:
 - (i) Affidavit. A graffiti abatement warrant shall be issued only upon cause, supported by affidavit, particularly describing: the applicant's status in applying for the warrant; the ordinance or regulation requiring or authorizing the removal

and abatement of the graffiti; the building or property to be entered; the basis upon which cause exists to remove or abate the graffiti; and a statement of the graffiti to be removed or abated.

- (ii) Cause. Cause shall be deemed to exist if there is reasonable belief that a graffiti violation exists, as defined in this Chapter, with respect to the designated property, and that the property owner has been given notice and an opportunity to abate the graffiti, and has not responded in a timely fashion.

(D) Procedure for Issuance of a Graffiti Abatement Warrant:

- (i) Examination. Before issuing a graffiti abatement warrant, the Judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.
- (ii) Issuance. If the Judge is satisfied that cause for the removal and abatement of any graffiti nuisance exists and that the other requirements for granting the application are satisfied, the Judge shall issue the graffiti abatement warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general types and estimated quantity of the items to be removed or conditions abated. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the Judge has specifically determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
- (iii) Police Assistance. In issuing a graffiti abatement warrant, the Judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the bureau in any way necessary to enter the property

and remove and abate the graffiti.

(E) Execution of Graffiti Abatement Warrants:

- (i) Occupied Property. Except as provided in 4.4(b), in executing a graffiti abatement warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority, and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request. A copy of the warrant shall be left with the occupant or the person in possession.
- (ii) Unoccupied Property. In executing a graffiti abatement warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in 4.4(b)(3)(E)(i), but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case, a copy of the graffiti abatement warrant shall be conspicuously posted on the property.
- (iii) Return. A graffiti abatement warrant must be executed within ten (10) working days from its date of execution. After the expiration of the time prescribed by this Subsection, the warrant, unless executed, is void.

4.5 Graffiti Abatement Consent Forms:

- 4.5(a) The Manager shall develop consent forms allowing the Manager to enter onto property to abate the graffiti without prior notice from the Manager. The Manager shall make these consent forms available to the public.
- 4.5(b) Property owners and occupants may request and sign consent forms for allowing graffiti abatement. The Graffiti Abatement Manager shall renew the consent forms at least biannually.

The City Council hereby declares an emergency, declaring that this Ordinance is immediately necessary to secure the continued general public health and general welfare of the citizens of the City of Maywood Park, and that this Ordinance is immediately necessary to conserve, stabilize, and protect property within the incorporated area of the City of Maywood Park. The Ordinance shall take effect and be in force immediately.

PASSED AND APPROVED by the City Council of the City of Maywood Park on the 5th day of September, 2006.

/s/ Mark Hardie
MARK HARDIE, Mayor

ATTEST:

/s/ Julie D. Risley
Julie D. Risley, City Recorder/Treasurer