

ORDINANCE NO. 2020-

AN ORDINANCE amending the City of Yakima Municipal Code Chapter 11.11: Graffiti Abatement

WHEREAS, the City of Yakima has deemed graffiti a nuisance, and its existence on buildings, fences, trees, dumpsters, and other real or personal property creates blight in the City's neighborhoods and commercial centers; and

WHEREAS, the Office of Neighborhood Development historically has taken complaints, obtained permission where necessary, and painted over graffiti as part of the City's Graffiti Abatement Program; and

WHEREAS, with the enactment and funding of the Clean City Program by the City Council in the 2020 budget year, the oversight and execution of the Graffiti Abatement Program moved to the Codes Administration Division; and

WHEREAS, each time a Codes Enforcement Officer is required to follow up on a graffiti complaint, they are required to do a site visit, and if property owners and tenants are unwilling to follow the code, they should be penalized; and

WHEREAS, funding for the Graffiti Abatement Program does not always fully cover the costs associated with materials and personnel necessary to abate each and every complaint received for graffiti, so the City must prioritize properties as part of the program; and

WHEREAS, the City Council of the City of Yakima finds that it is in the best interests of the City and its residents to amend Yakima Municipal Code Section 11.11: Graffiti Abatement; now, therefore,

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. Chapter 11.11 Graffiti Abatement of the City of Yakima Municipal Code is hereby amended to read as follows:

Chapter 11.11 GRAFFITI ABATEMENT

Sections:

- 11.11.010 Graffiti deemed nuisance.
- 11.11.020 Definitions.
- 11.11.030 Graffiti—Notice to abate.
- 11.11.035 City abatement program--priorities
- 11.11.040 City abatement program—Request for assistance.
- 11.11.050 Appeal of notice and order to abate—stay of proceedings
- 11.11.060 Penalty
- 11.11.070 Abatement by city--enforcement

11.11.010 Graffiti deemed nuisance.

A. Graffiti and other defacement of public and private property, including walls, rocks, bridges, fences, gates and other structures, trees and other real and personal property within the city, constitutes a nuisance. The city council finds that graffiti is also associated with criminal street

gang activity pursuant to RCW 9A.48.105 and YMC 6.11.025 and that proliferation of graffiti promotes criminal street gangs and criminal street gang activity. Such activity constitutes an immediate threat to the life, health, safety and property of residents of the city. Procedures herein requiring abatement, following notice and opportunity to appeal, are necessary and will preserve and protect the life, health, safety and property of residents of the city.

B. Although it is appropriate, where possible, to request that the courts require people who are convicted of acts of defacement and vandalism involving application of graffiti to public or private property to restore the property so defaced, damaged or destroyed, apprehension of persons who commit such acts is difficult because the offenses involved can be committed quickly and surreptitiously so that witnesses to the acts are frequently nonexistent.

C. Although the public should be encouraged to cooperate in the elimination of graffiti by reporting the same to the proper authorities, it is also important to eliminate the presence of graffiti from the community so that the product of the illegal acts of those involved in application of graffiti is not visible and the property on which the graffiti is located and surrounding properties do not suffer diminution of value. (Ord. 2012-39 § 1 (Exh. A) (part), 2012: Ord. 2001-16 § 1, 2001).

11.11.020 Definitions.

For the purposes of this chapter, the following words shall have the following meanings:

A. "Abate" means to repair, replace, remove, paint over, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the director determines appropriate in the interest of the general health, safety and welfare of the community. For purposes of this chapter, when the City abates graffiti under section 11.11.040 herein, abate means only to paint over.

B. "City property" means property owned by the City, including, but not limited to, real and personal property, trees, utility poles, garbage cans and dumpsters.

C. "Director" means the city of Yakima director of community development and his or her designee.

D. "Graffiti" means the defacing, damaging or destroying by painting by whatever means or marking of ink, chalk, dye, or other similar substances or placement of stickers or appliques on public or private buildings, structures and places.

E. "Graffiti abatement procedure" means the abatement procedure which identifies graffiti, issues notice to the landowner to abate the graffiti, and cures the absence of response.

F. "Owner" means any person or entity, who alone or with others, has legal title to a property.

G. "Private contractor" means any person with whom the city shall have duly contracted to remove graffiti.

H. "Property" means any land and that which is affixed, incidental or appurtenant to land, including, but not limited to any business or residence, parking area, loading area, landscaping, building, fence or structure, or any separate part, unit or portion thereof.

I. "Property Manager" means a person or entity who has a contract with an Owner to manage real property.

J. "Tenant" means a person or persons who are renting or leasing real property under any type of landlord-tenant relationship.

(Ord. 2012-39 § 1 (Exh. A) (part), 2012: Ord. 2001-16 § 2, 2001).

11.11.030 Graffiti—Notice to abate.

A. Whenever the director determines that graffiti exists on any public or private buildings, structures, and places which are visible to any person utilizing any public road, parkway, alley, sidewalk, or other right-of-way within the city, the director shall cause a notice to be issued to abate such nuisance. The property owner shall have five days after receipt of the notice to abate the graffiti or the same will be subject to Section 11.11.050 of this code. The director may specify a period in excess of five days after the date of notice to abate the graffiti when weather conditions do not permit the painting of exterior surfaces or abatement by other means.

B. The notice to abate graffiti pursuant to this section shall cause a written notice to be served upon the owner(s) of the affected premises, as such owners' name and address appear on the last property tax assessment rolls for Yakima County, Washington. If there is no known address for the owner, the notice shall be sent in care of the property address. 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 at the last known address of said owner. If this address is unknown, the notice will be sent to the property address. If notice is served by U.S. first class mail, notice shall be deemed to have been received three days after depositing such notice, postage prepaid, in the United States mail in a properly addressed envelope.

C. The notice required by this section shall be in substantially the following form:

NOTICE AND ORDER TO ABATE GRAFFITI

Date:

To:

The City has found that your property located at _____,
Yakima, Washington, has graffiti in violation of Chapter 11.11 of the Yakima
Municipal Code. This Notice is given pursuant to YMC 11.11.030 requiring
such graffiti to be abated within five (5) days of your receipt of this Notice.

Within five (5) days of the receipt of this Notice, you are ordered to:

(a) Paint over or abate the graffiti yourself; OR

(b) Contact the City of Yakima Code Administration Division to see if you qualify to participate in the city's graffiti abatement program. If your property is eligible for participation, the city or its contractor may perform the abatement by painting over the graffiti. The city or its contractor will use its own paint.

Code Administration Division Graffiti Abatement Program may be contacted at (509)576-6657.

IF THE GRAFFITI IS NOT ABATED, OR IF YOU HAVE NOT BEEN APPROVED TO PARTICIPATE IN THE GRAFFITI ABATEMENT PROGRAM, WITHIN FIVE DAYS OF YOUR RECEIPT OF THIS NOTICE, the City of Yakima will enforce the provisions of this code to ensure abatement of graffiti from property.

All persons having any objection to said matters are hereby notified to submit any objections in writing to the Director of Community Development of the City of Yakima within eight (8) days from the date of this notice. If you fail to comply with this order, or appeal it pursuant to YMC 11.11.060, a penalty will be assessed against you in the amount of \$25.00 for each 5 day period you remain in violation of this chapter.

If no objections to the notice are received by the City, the City will proceed with enforcement of this chapter and all available laws to address the graffiti located on the property.

(Ord. 2012-39 § 1 (Exh. A) (part), 2012: Ord. 2005-05 § 1, 2005: Ord. 2001-16 § 3, 2001).

11.11.035 City abatement program—Priorities

There may not always be adequate funding or personnel for the City abatement program outlined in 11.11.040. When funding and/or personnel is limited, the following priority may be established for service to those property owners who have entered the program:

- (1) Single-family residential zoned properties and City Property;
- (2) Two-family residential zoned properties;
- (3) Multi-family residential zoned properties;
- (4) CBD zoned properties;
- (5) All other commercial zoned properties;
- (6) Manufacturing zoned properties.

Entry into the graffiti abatement program is not a guarantee of service. If adequate funding or personnel is not available, the property owner/property manager and tenant (if applicable) will be notified that they are responsible for the abatement of graffiti on the property.

11.11.040 City abatement program—Request for assistance.

Subject to availability of funding and personnel, the city makes available a graffiti abatement program. Owners of property within the city, and any owner who receives a notice issued pursuant to YMC 11.11.030 to abate graffiti, may request assistance from the city's graffiti abatement program to abate graffiti placed on their property. Participation in such graffiti abatement program shall include the following:

- A. Applicant shall sign a consent and release from liability form approved by the city authorizing city personnel and/or its contractors to enter upon the owner's property for the purpose of abating the graffiti. Upon execution, such consent and release shall be in effect pursuant to the terms and conditions of the document. Any consent and release may be revoked in writing by the owner and/or property manager and/or tenant at any time.
- B. The city or its contractors may abate the graffiti. Graffiti abated by the City shall be only by application of paint provided by the city or contractor. Matching paint is not guaranteed. The city will only paint over graffiti and will not remove it through sand blasting or other means.
- C. For applicants who have received a notice issued pursuant to YMC 11.11.030 to abate graffiti, acceptance into the city's graffiti abatement program shall stay the five-day compliance requirement, or such other compliance deadline established in such notice by the director unless otherwise notified by the city.
- D. The city or its contractors shall not authorize nor undertake to provide for the painting of any more extensive area than the area where the graffiti is located.
- E. The city reserves the right to establish, modify and amend its graffiti abatement program, and to define by rule or policy standards of eligibility for participation, methods of abatement and scheduling of abatement activities. (Ord. 2012-39 § 1 (Exh. A) (part), 2012).

11.11.050 Appeal of Notice and Order to Abate—Stay of proceedings.

A. Upon receipt of a timely written appeal from the owner or person occupying or controlling the premises affected, the codes administration manager shall, within ten days of receipt of said timely appeal forward the objection to the director. The director shall conduct a hearing. The codes administration manager, the owner, and other parties entitled to be served with the notice to abate graffiti may participate as parties in the hearing and each party may call witnesses. Any complainant or person affected by the graffiti may appear and present evidence. The city shall have the burden of demonstrating by a preponderance of evidence that the graffiti at issue is in violation of this chapter and that a determination of hardship should not issue. Following such hearing, the director shall:

1. Issue a determination upholding the codes administration manager's determination and requiring abatement within a specific period of time;
2. Issue a determination of hardship; or
3. Issue a determination of termination of proceedings.

B. A determination upholding the codes administration manager's determination shall be served in the same manner as the notice to abate graffiti contained in YMC 11.11.030. Such determination shall notify the property owner of the city's intent to proceed with any legal recourse after the period of time listed in the determination has expired.

C. A determination of hardship shall stay the enforcement of this chapter for a specified period. A determination of hardship shall be issued to give appropriate effect to special and extenuating circumstances which, in order to do substantial justice, warrant the exercise of discretion to adjust the timeframes, standards, and other provisions of this chapter. Examples of circumstances which may warrant such exercise of discretion include, without limitation: medical illness or disability affecting a property owner's ability to comply, absences from Yakima County, and bona fide insurance coverage disputes that create a definite risk that enforcement of this chapter would unfairly result in a substantial economic loss to the property owner.

D. Any person aggrieved by the decision of the director may appeal to the hearing examiner as set forth in Chapter 1.43 of this code and in accordance with the procedures of Chapter 16.08 of this code. Appeals shall be filed with the Community Development Director. (Ord. 2012-39 § 1 (Exh. A) (part), 2012: Ord 2001-16 § 6, 2001. Formerly 11.11.055).

11.11.060 Penalty

Failure to comply with the Notice of Intent issued pursuant to YMC 11.11.030 may result in penalties against the property owner. A penalty of twenty-five dollars (\$25.00) may be assessed if the graffiti is not abated. The first penalty shall be issued ten (10) days after the Notice of Intent is issued. An additional twenty-five dollar (\$25.00) penalty may be added for every additional five (5) day period thereafter.

11.11.070 Enforcement.

Upon failure of persons to comply with the notice by the designated date, or such continued date thereafter as the director approves, or upon failure or refusal of the owner to participate in any available city graffiti abatement program, then the city attorney may initiate an action in any court of competent jurisdiction to abate the graffiti, to impose penalties pursuant to this chapter, to seek alternative remedies under city or state laws or seek any other relief authorized by law. The City is entitled to its costs associated with enforcement of this chapter, including, but not limited to reasonable attorneys' fees and costs.

(Ord. 2012-39 § 1 (Exh. A) (part), 2012: Ord. 2001-16 § 7, 2001. Formerly 11.11.070).

Section 2. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this ____ day of ____, 2020.

ATTEST:

Patricia Byers, Mayor

Sonya Claar Tee, City Clerk

Publication Date:_____

Effective Date:_____