

LEGISLATIVE #

100198

Ordinance No. 100198

1
2
3 **An Ordinance of the City of Gainesville, Florida, amending**
4 **Divisions 1 and 2 of Chapter 13 of the Code of Ordinances**
5 **relating to graffiti; by repealing the definition of graffiti in**
6 **Division 1, section 13-1 and repealing the reference to graffiti**
7 **in section 13-2; amending Division 2 by creating and adding**
8 **the Gainesville Graffiti Abatement Program, consisting of**
9 **sections 13-6 through 13-13; providing title, purpose and**
10 **findings; definitions; removal of graffiti; reporting of graffiti;**
11 **graffiti on city property; graffiti on other government**
12 **property; graffiti on private property; failure of owner to**
13 **abate graffiti; providing directions to the codifier; providing a**
14 **severability clause; providing a repealing clause; and**
15 **providing an immediate effective date.**
16
17
18

19 **WHEREAS**, at least 10 days notice has been given once by publication in a
20 newspaper of general circulation notifying the public of this proposed ordinance and of a
21 public hearing to be held in the City Commission Auditorium, City Hall, City of
22 Gainesville; and

23 **WHEREAS**, the Public Hearings were held pursuant to the published notice
24 described at which hearings the parties in interest and all others had an opportunity to be
25 and were, in fact, heard.

26 **Section 1.** The definition of graffiti is repealed from Sec. 13-1 of Division 1,
27 Article 1, of the Gainesville Code of Ordinances as follows. Except as amended herein,
28 the remainder of Sec. 13-1 remains in full force and effect.
29

1 **DIVISION 1. – GENERAL REQUIREMENTS FOR FENCES AND WALLS**

2 **Sec. 13-1. Definitions.**

3 As used in this division:

4 ~~*Graffiti* shall mean any unauthorized inscription, word, figure, painting or other~~
5 ~~defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or~~
6 ~~engraved on or otherwise affixed to any surface of public or private property by any~~
7 ~~graffiti implement, to the extent that the graffiti was not authorized in advance by the~~
8 ~~owner or occupant of the property, or, despite advance authorization, is otherwise~~
9 ~~deemed a public nuisance by the enforcing official.~~

10 **Section 2.** Section 13-2(b)(1), Gainesville Code of Ordinances, is amended to
11 read as follows:

12 **Sec. 13-2. - Construction and maintenance.**

13 (b) *Maintenance.*

14 (1) All fences and walls shall be maintained upright and in good condition.
15 For purposes of this section, upright shall mean no vertical structural
16 member shall list or lean to such an extent that a normally vertical
17 structural member shall be more than two inches out of plumb in ten feet
18 or less of vertical distance. For purposes of this section, in good condition
19 means without missing, broken, chipped or cracked elements ~~and without~~
20 ~~graffiti.~~

1 Section 3. Sections 13-6 through 13-13 are hereby created and added to Division
2 of Article 1, Gainesville Code of Ordinances, to read as follows:

3 **DIVISION 2. - ~~RESERVED~~ GAINESVILLE GRAFFITI ABATEMENT**
4 **PROGRAM**

5 **Sec. 13-6. Title, purpose and findings**

6 (a) Title. This division shall be known as the "The Gainesville Graffiti Abatement
7 Program".

8 (b) Purpose. The City Commission of the City of Gainesville is enacting this
9 Program to help prevent the spread of graffiti vandalism and to establish a
10 program for the abatement of graffiti from public and private property. The
11 Commission does not intend for this Program to conflict with any existing anti-
12 graffiti state laws.

13 (c) Finding. The Commission finds that the unauthorized application of graffiti is
14 both a public nuisance and destructive of the rights and values of property owners.
15 Accordingly, the City is taking action to encourage and facilitate the reporting and
16 abatement of graffiti.

17 **Sec. 13-7. Definitions.**

18 For the purposes of this Article, the following words shall have the meanings respectively
19 ascribed to them in this Section, except where the context clearly indicates a different
20 meaning:

21 (a) Advance authorization, for purposes of this article, shall mean authorization that
22 is made in writing by the owner, and filed with the City Manager or designee,

1 before the writing, marking, etching, scratching, spraying, drawing, painting, or
2 engraving occurs.

3 (b) Graffiti means any unauthorized inscription, word, figure, painting or other
4 defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or
5 engraved on or otherwise affixed to any surface of public or private property by
6 any graffiti implement, to the extent that the graffiti was not authorized in
7 advance, and which is visible to the public or from public streets, sidewalks, or
8 properties that are open to the public.

9 (c) Graffiti abatement or abatement of graffiti means the effective elimination and
10 removal of the graffiti.

11 (d) Graffiti implement means an aerosol paint container, a broad-tipped marker, gum
12 label, paint stick or graffiti stick, etching equipment, brush or any other device
13 capable of scarring or leaving a visible mark on any natural or human-made
14 surface.

15 (e) Owner means a property owner or the property owner's designated agent unless
16 otherwise specified.

17 (f) Person means any individual, partnership, cooperative association, private
18 corporation, personal representative, receiver, trustee, assignee, or any other legal
19 entity.

20 **Sec. 13-8. Removal of graffiti.**

21 Any person applying graffiti on public or private property shall have the duty to
22 remove the graffiti within twenty-four (24) hours after notice by the City or private owner

1 of the property involved. Such removal shall be done so as to eliminate and remove the
2 graffiti in a manner prescribed by the City Manager or designee. Any person applying
3 graffiti shall be responsible for the elimination and removal of the graffiti. Failure of any
4 person to remove graffiti or pay for the removal shall constitute an additional violation of
5 this section, punishable as provided in section 1-9 of the Gainesville Code of Ordinances.
6 Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall
7 also be responsible for such removal or for the payment for the removal. If the person
8 applying the graffiti fails to eliminate and remove the graffiti as prescribed herein, the
9 City may eliminate and remove the graffiti and the City's costs and expenses shall be
10 charged against that person.

11 **Sec. 13-9. Reporting of graffiti.**

12 (a) The City Manager or designee shall establish a program to encourage and
13 facilitate the reporting of graffiti or suspected graffiti by property owners, city or
14 county employees, or citizens.

15 (1) This graffiti reporting program shall incorporate reporting by electronic
16 means, such as E-mail, or a web based form on the internet, or both, in
17 addition to written reports.

18 (2) This graffiti reporting program will allow an option for anonymous
19 reporting.

20 (b) The City Manager or designee shall establish a program to encourage and
21 facilitate the reporting of information leading to the identity of the person

1 applying the graffiti, which information shall be forwarded for any warranted
2 follow-up investigation by law enforcement.

3 (1) This graffiti reporting program shall incorporate reporting by electronic
4 means, such as E-mail, or a web based form on the internet, or both.

5 (2) This graffiti reporting program will allow an option for anonymous
6 reporting, but shall caution this may limit the ability to perform any
7 follow-up investigation.

8 **Sec. 13-10. Graffiti on city property.**

9 After receipt of notification of the presence of graffiti, and verification thereof, on
10 property of the City of Gainesville, the City Manager or designee shall either:

11 (1) act to abate the graffiti within twenty-four (24) hours of notification; or

12 (2) arrange for abatement of the graffiti to be performed by an authorized
13 community based organization, or by a contractor to the city or by city
14 employees, within 10 days of notification, and further arrange for
15 verification that said abatement has occurred.

16 **Sec. 13-11. Graffiti on other government property.**

17 After receipt of notification of the presence of graffiti, and verification of same,
18 on property within the City of Gainesville and owned by Alachua County, the State of
19 Florida, the United States of America, or any other governmental body or entity, the City
20 Manager or designee shall notify the responsible governmental entity, and either:

21 (1) request abatement of the graffiti by that entity within 5 business days; or

1 (2) offer to provide abatement services, and upon agreement by the entity,
2 facilitate abatement of the graffiti by the authorized community based
3 organization, and/or by a contractor to the city, within 10 days of
4 notification, and to further arrange for verification that said abatement has
5 occurred.

6 **Sec. 13-12. Graffiti on private property – notice to owner and reply by owner.**

7 After receipt of notification of the presence of graffiti on private property and
8 verification of the presence of said graffiti, the City Manager or designee shall notify the
9 owner that there is graffiti on the property, by providing written notice to the property
10 owner.

11 (a) Notice delivery. Said notice shall be provided as follows:

12 (1) The notification shall be provided by delivering or posting a written notice
13 to the property on which, or at which, the graffiti is located. The
14 notification shall be personally served on the owner or the owner's
15 designated agent if present, or placed on the main entrance door.

16 (2) In addition, if notice has not been effected by personal delivery to the
17 owner or the owner's designated agent, notice shall be delivered by first-
18 class mail to the owner of the property at the address listed on the tax rolls
19 of Alachua County, Florida.

20 (b) Notice and reply contents. Said notice shall include a space or method to reply,
21 where the owner may advise the City Manager or designee that the owner:

22 (1) Denies that there is graffiti on the property; or

1 (2) Authorizes the City Manager or designee to arrange for abatement of the
 2 graffiti, including permission to enter the property after notice and to
 3 either clean up or paint over the graffiti. Said consent shall include
 4 recognition that the City, any authorized community based programs, or
 5 any city contractors who remove or cover up the graffiti may utilize
 6 donated or surplus paint, and cannot guarantee color matching; or

7 (3) Will abate the graffiti within twenty-four (24) hours after the date of the
 8 notice;

9 (c) Failure to reply. A failure to timely reply to the notice within 10 calendar days of
 10 the date of the mailing of the notice shall be deemed to be consent for entry upon
 11 the property and abatement of the graffiti by:

12 (1) an authorized and designated city employee; or

13 (2) a community based program authorized by the city to provide such
 14 services; or

15 (3) a contractor authorized and provided by the city to provide such services.

16 (d) False statements – penalty. The making of a false statement in the response to a
 17 notification of the presence of graffiti shall be a violation of this code, punishable
 18 as provided in section 1-9 of the Gainesville Code of Ordinances.

19 **Sec. 13-13. Failure of owner to abate graffiti**

20 If the owner elects in their response pursuant to Section 13-12(b)(3) to eliminate
 21 and remove the graffiti, but fails to do so within the time period as set forth, this shall be
 22 deemed to be consent for entry upon the property and abatement of the graffiti by:

1 (1) an authorized and designated city employee; or

2 (2) a community based program authorized by the city to provide such
3 services; or

4 (3) a contractor authorized and provided by the city to provide such services.

5 **Section 4.** It is the intention that Sections 1 through 3 of this Ordinance shall
6 become and be made a part of the Code of Ordinances, of the City of Gainesville,
7 Florida, and that the sections and paragraphs of this ordinance may be renumbered or re-
8 lettered in order to accomplish such intentions.

9 **Section 5.** If any word, phrase, clause, paragraph, section or provision of this
10 ordinance or the application hereof to any person or circumstance is held invalid or
11 unconstitutional, such finding shall not affect the other provisions or applications of the
12 ordinance which can be given effect without the valid or unconstitutional provisions or
13 application, and to this end the provisions of this ordinance are declared severable.

14 **Section 6.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
15 such conflict hereby repealed.

16 **Section 7.** This ordinance shall become effective immediately on adoption.

17

DRAFT

6/22/11

1 PASSED AND ADOPTED this ___ day of _____, 2011.

2

3

4

CRAIG LOWE

5

MAYOR

6

7

8

ATTEST

APPROVED AS TO FORM AND LEGALITY

9

10

11

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

12

13

14

15 This Ordinance passed on first reading this ___ day of _____, 2011.

16 This Ordinance passed on second reading this ___ day of _____, 2011.