

ORDINANCE NO. 1881

(An ordinance amending Section 8.10.060—Graffiti Abatement—Removal by City—Lien for Expenses—of the Hood River Municipal Code)

WHEREAS, the City has in place a comprehensive ordinance to reduce and clean up graffiti in the City;

WHEREAS, the ordinance allows the City to remove graffiti from property that has been tagged by graffiti at the owner's request or if the owner fails to remove the graffiti following request by the City to do so;

WHEREAS, if the owner requests that the City remove the graffiti, the owner is required to sign a graffiti removal agreement pursuant to which the owner agrees to hold the City harmless from any damage that may result that is not caused by the City's negligence;

WHEREAS, if the City is required to remove the graffiti because the owner has failed to take steps to remove it after request by the City, the City should, by law, be immune from suit for any damage that may result that is not caused by the City's negligence.

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Section 8.10.060 of the Hood River Municipal Code is amended to read as follows:

CHAPTER 8.10 – GRAFFITI ABATEMENT

Sections:

- 8.10.010 Declaration of Nuisance
- 8.10.202 Definitions
- 8.10.030 Notice Requesting Removal
- 8.10.040 Abatement of Graffiti Property
- 8.10.050 Appeal
- 8.10.060 Removal by City – Lien for Expenses; City not Liable for Damages
- 8.10.070 Graffiti Removal Consent
- 8.10.080 Violation – Penalty

8.10.010 Declaration of Nuisance.

A. Graffiti is a problem in many areas of the City of Hood River. The existence of graffiti causes damage to the public by creating blight, marring the City's visual attractiveness, adversely affecting the quality of life for the City's citizens and discrediting the City's reputation for livability. Graffiti is a public nuisance and destructive of the rights of property owners and of the entire community. When graffiti is allowed to remain on property and not promptly removed, it invites more graffiti and criminal activity.

B. The City has a substantial and compelling interest to prevent and abate the application of graffiti so that the damage and visual blight caused by graffiti is prevented or eliminated.

C. The welfare of the citizens of the City will be served by declaring the existence of graffiti to be a nuisance and to provide for its prompt removal.

8.10.020 Definitions. As used in this Chapter, the following words or phrases shall have the following meanings:

“Graffiti” means any unauthorized markings applied or made to property regardless of the content, nature of the material used in the commission of the act, or nature of the property.

“Graffiti Property” means property upon which graffiti has been applied, if the graffiti is visible from any public right of way, any premises open to the public, or other publicly owned property.

“Owner” means any person, agent, firm or corporation having a legal or equitable interest in property. Owner includes a mortgagor in possession who has all or part of the legal title to the property or all or part of the beneficial ownership and right to present use and enjoyment of the property or premises. Owner also includes an occupant who has control over the property or premises, including state and political subdivisions of the state, school districts and special districts.

“Permit” means to knowingly suffer, allow, or acquiesce by any failure, refusal or neglect to abate.

“Property” means any real or personal property and that which is affixed, incident or appurtenant to real property, including any premise, house, building, fence, structure, or any separate part thereof, whether permanent or not.

“Unauthorized” means without the consent of the owner.

8.10.030 Notice Requesting Removal. Whenever it has been determined that graffiti property exists, written notice shall be sent to the property owner requesting prompt removal of the graffiti. If the property owner does not respond within the time requested, the City may pursue abatement as provided in this chapter.

8.10.040 Abatement of Graffiti Property.

A. Upon a determination that graffiti is not being or will not be removed as requested, the City may issue an abatement notice.

B. The abatement notice shall be served upon the owner of the graffiti property and upon the occupant, if the occupant is different from the owner. Service may be by personal service or by certified return receipt mail to the last known address of the owner or occupant. If service is made by mail or if the whereabouts or address of the owner or occupant cannot be ascertained with reasonable diligence, the notice shall be posted on the graffiti property. The failure of any occupant or owner to receive actual notice shall not invalidate or otherwise

affect the proceedings under this chapter.

C. The abatement notice shall contain the following information:

1. The street address or a description sufficient for identification of the graffiti property.
2. A statement as to why the property is graffiti property.
3. A statement that the graffiti must be removed within ten (10) days of the date the abatement notice was personally served, mailed or posted. That in the alternative, the owner may, within the ten (10) day period, give the City written permission to enter the property and remove the graffiti at the owner's expense, if the City agrees to undertake the removal.
4. A statement that if, within the ten (10) day period, the graffiti is not removed or if permission is not given to the City to remove the graffiti, the City may, in the City's sole discretion, enter the property and remove the graffiti or employ any other remedy deemed by it to be appropriate to abate the nuisance.
5. A statement that if the City removes the graffiti, with or without the permission of the owner, that the owner shall reimburse the City for its expenses, including total personnel services, costs, materials and an additional charge of 25% for administrative overhead.
6. A statement that any expenses of abatement incurred by the City shall be assessed against and become a lien on the property unless paid within thirty (30) days from the date of notice of assessment of the expenses.
7. A statement that any owner who, within the ten (10) day period, fails to remove graffiti or to reach an agreement with the City to enter the property and remove graffiti, may be subject to prosecution for a violation, punishable by a fine of not less than fifty dollars and not more than two hundred fifty dollars per day.
8. A statement that the abatement notice may be appealed to the City Council within the ten (10) day period by filing a written objection with the City Recorder specifying the basis for the appeal.

8.10.050 Appeal.

A. The owner or owner's authorized representative may appeal the abatement notice to the City Council within the ten (10) day period by filing a written objection with the City Recorder specifying the basis for the appeal. The appeal shall be heard at the next regularly scheduled meeting of the Council, or as soon as practicable thereafter. If the City Council finds that the property is graffiti property and that notice was given as provided in this Chapter, the City Council shall specify when and under what conditions the graffiti shall be removed.

B. The owner or owner's authorized representative shall have the right to appeal the amount of any assessment for the cost of abatement by the City, within ten (10) days of the notice of assessment. The appeal shall be in writing filed with the City Recorder, and shall specify the basis for objection to the amount of the assessment. The appeal shall be heard at the next regularly scheduled meeting of the Council, or as soon as practicable thereafter.

8.10.060. Removal by City -- Lien for Expenses; City not Liable for Damage.

A. If the owner fails to remove graffiti pursuant to an abatement notice and the City causes the graffiti to be removed, or if the City removes the graffiti pursuant to written consent given by the owner or authorized representative, the City shall assess the owner for its expenses, including total personnel services, costs, materials and an additional charge of 25% for administrative overhead. The City's expenses shall be assessed against and become a lien on the subject property unless paid within thirty (30) days from the date of notice of assessment of the expenses.

B. Except in the case of the City's negligence, including the negligence of its employees, agents, and contractors, the City and its employees, agents, and contractors shall not be liable for any and all loss, claim or damages arising from, or related to, the acts or omissions of the City, its employees, agents and contractors, in connection with the removal of the graffiti from the graffiti property.

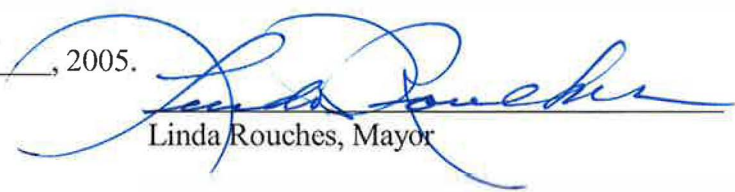
8.10.070. Graffiti Removal Consent. The City shall make a form for consent to remove graffiti available to property owners or their authorized representatives. Any owner may request and sign a consent form for allowing graffiti removal. If the person signing the consent form, or any other written consent, is not the owner of the property, proof of authorization from the owner to sign the consent form shall be provided.

8.10.080 Violation - Penalty. It shall be unlawful for any person to permit graffiti property in contravention of an abatement notice. A person commits the offense of permitting graffiti nuisance property if that person is the owner of any graffiti nuisance property in the City and fails to remove any graffiti from the property within ten (10) days of the date the abatement notice was personally served, mailed or posted. The offense shall be punishable by a fine of not less than fifty dollars and not more than two hundred fifty dollars per day.

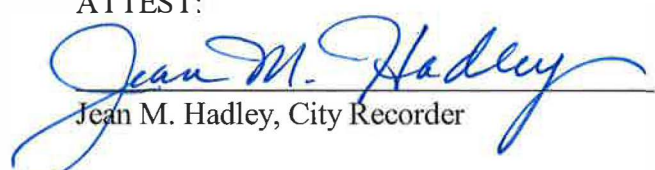
Read for the first time: September 12, 2005.

Read for the second time and passed: September 26, 2005, to become effective thirty (30) days hence.

Signed September 27, 2005.


Linda Rouches, Mayor

ATTEST:


Jean M. Hadley, City Recorder