

ORDINANCE NO. #2006- 13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, ENTITLED "GRAFFITI;" PROVIDING FOR DEFINITIONS; PROVIDING FOR FINES TO BE IMPOSED; PROVIDING FOR POSSESSION OF SPRAY PAINT AND MARKERS TO BE PROHIBITED; PROVIDING FOR GRAFFITI TO BE DECLARED A NUISANCE; PROVIDING FOR PROPERTY OWNERS TO BE RESPONSIBLE FOR THE REMOVAL OF GRAFFITI; PROVIDING FOR AN APPEAL PROCESS OF THE VIOLATION; PROVIDING A PROCEDURE FOR THE CITY TO REMOVE THE GRAFFITI AND LIEN PROPERTY FOR THE CITY'S EXPENSE; PROVIDING FOR PROPERTY OWNERS TO DISPUTE ASSESSED COSTS; PROHIBITING SALE OF SPRAY PAINT OR MARKERS TO PESONS UNDER AGE OF 18; PROVIDING FOR SIGNS TO BE DISPLAYED IN BUSINESSES WHICH SELL SPRAY PAINT OR MARKERS INDICATING THAT GRAFFITI IS A CRIME; PROVIDING FOR PENALTIES FOR BUSINESSES THAT FAIL TO COMPLY; PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION, PROVIDING FOR CONFLICTS; AND AN PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City has experienced an increase in the number of graffiti incidents which has produced a significant increase in the number of unsightly properties that can be viewed from the public rights-of-way, resulting in complaints by citizens and businesses about the adverse impact on the aesthetics and appearance of the City, and concern by the public and City officials with regard to a further increase in graffiti incidents; and

WHEREAS, the City of Doral wishes for the City to remain free of graffiti and to maintain the character of the business and residential districts; and

WHEREAS, the City Council of the City of Doral has sought to enhance the aesthetics of the City of Doral community; and

WHEREAS, the City Council through the adoption of this ordinance seeks to continue to maintain the City free from graffiti and to take the necessary steps to have property owners comply;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DORAL:

Section 1. The foregoing "Whereas " clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. That new ordinance of the City of Doral, entitled, "Graffiti," shall be and it is hereby created to read as follows:

ARTICLE 1 GRAFFITI

SECTION I. GENERALLY

Sec. 1-1 Definitions.

Unless it is apparent from the context that another meaning is intended, the following when used in this article, shall have the meanings attributed to them by this section:

Abatement means the repair, rehabilitation, demolition or removal of a public nuisance.

City's agent means an independent contractor performing graffiti abatement for the City.

Code compliance officer means any designated employee acting as an agent of the City whose duty it is to enforce codes and ordinances enacted or adopted by the City.

Commercial property means property that is used for business, commercial, or for-profit purposes. It shall be prima facie evidence that a property is commercial if it is located in a business, commercial, office, apartment, hotel or industrial zoning district.

"Commercial property" shall include non-permanent structures such as trailers, dumpsters, traffic signs, barricades, utility poles, traffic signal boxes, and construction equipment. "Commercial property" shall not include: (1) single-family homes or residential property of three or less units; (2) property owned by governments; (3)

property used for non-profit purposes by educational institutions, charities, or religious institutions.

Corrective action means an act required to remove or effectively obscure graffiti that is visible from the right-of-way.

Director means the director of the department designated by the City Manager to enforce and administer this article or the director's designated representative.

Graffiti means the unauthorized application of paint, ink, chalk, dye, felt-tip or indelible marker, crayon or any non-water soluble substance, or by applying or affixing inscribed or engraved materials, including posters, placards and flyers of any size and type on public or private permanent structures located on publicly or privately owned real property within the city.

Marker means any felt-tip or indelible marker, or similar implement, which contains a fluid which is not water soluble and which has a flat, angled, or rounded writing surface one-quarter inch or greater.

Non-commercial property means all property that is not included in the definition of commercial property in this section.

Non-permanent structures means trailers, dumpsters, traffic signs, barricades, utility poles, traffic signal boxes, and construction equipment.

Nuisance means anything injurious to health so as to interfere with the comfortable enjoyment of life or property, which nuisance affects at the same time an entire community or neighborhood, or any considerable numbers of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Owner means any and all persons with legal and/or equitable title to real property in the city as their names and addresses are shown upon the records of the Miami-Dade County Property Appraiser.

Public right-of-way means any road, parkway, alley, swale, sidewalk, easement or other public way.

Supervising adult means an individual twenty-one (21) years of age or older who has been given responsibility by minor's parents, legal guardian, or other lawful authority to supervise the minor.

Sec. 1-2. Prohibitions.

(a) It shall be unlawful for any person to deface, destroy, or otherwise damage private or public property without the owner's consent, by or through the application of graffiti.

(b) Any person violating this section shall be punished by a fine of up to \$500.00 per day for a first violation, \$1,000.00 per day per violation for a repeat violation, and up to \$5,000.00 per violation if the court or a special magistrate finds the violation to be irreparable or reversible in nature; or by imprisonment in accordance with the requirements of state law or both fine and imprisonment at the discretion of the court.

(1) In the case of a minor, the parents or legal guardian shall be jointly and severally liable with the minor for payment of all fines.

(2) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents or legal guardian's real property to include the fine and administrative costs.

(3) Upon an application and finding of indigence the court may decline to order fines against the minor or parents.

(c) In addition to any punishment listed in this section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offenses in the amount or manner determined by the court.

(1) In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make such restitution.

(d) In addition to any punishment listed in this section, the court shall order any violator to perform monitored community service in the removal of graffiti.

Sec. I-3. Possession of spray paint and markers.

(a) Possession of spray paint and markers with intent to make graffiti is prohibited.

(b) Possession of spray paint and markers by minors on public property is prohibited. No person under the age of 18 shall have in his or her possession any aerosol container of spray paint or marker while on any public property, or right-of-way, except in the company of a supervising adult.

(c) Possession of spray paint and markers by minors on private property is prohibited without the consent of the owner. No person under the age of 18 shall have in his or her possession any aerosol container of spray paint or marker while on any private property unless the owner, agent, manager, or person(s) in possession of the property have knowledge of the minor's possession of the aerosol container or marker and have consented to the minor's possession while on his or her property.

(d) Any person violating this section shall be punished by a fine of up to \$250.00 per day for a first violation, \$500.00 per day per violation for a repeat violation, and up to \$5,000.00 per violation if the court or a special magistrate finds the violation to be irreparable or reversible in nature.

(1) In the case of a minor, the parents or legal guardian shall be responsible for payment of all fines.

(2) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents' or legal guardian's real property to include the fine and administrative costs.

Sec. I-4. Graffiti declared a nuisance.

The creating or maintaining of the unauthorized application of paint, ink, dye, felt tip or indelible marker, or any non-water soluble substance, or the applying or affixing of other inscribed or engraved materials, including posters, placards, and flyers of any size and type, on public or private structures located on publicly or privately owned real property in the city is hereby declared to be nuisance.

Sec. I-5. Responsibility of property owner(s); graffiti removal and notice.

- (a) Maintenance or allowance of graffiti to exist for more than two days on a commercial property, or one day on a residential property, is prohibited.
- (b) Whenever the City becomes aware of the existence of graffiti on any property, a code compliance officer is authorized upon such discovery to give, or cause to be given, notice to take corrective action to the property owner or the property owner's agent or manager.
 - (1) Commercial property. For commercial property, the property owner or the property owner's agent or manager shall take corrective action within two business days from the receipt or delivery of the notice referenced within this section.
 - (2) Non-commercial property. For non-commercial property, the property owner, or property owner's agent shall take corrective action within one business day from the receipt or delivery of the notice referenced within this section.
- (c) Such notice shall be given by certified mail, return receipt requested; or by hand delivery by code compliance officer to the owner of record of the property described as recorded in the current county tax rolls. Mailed notice shall be deemed complete and sufficient notice when so deposited in the United States mail with proper postage prepaid.
- (d) The city shall waive painting permit requirements for abating graffiti, subject to the use of the same colored exterior paint, provided that the existing paint complies with all City requirements.
- (e) Graffiti abatement shall consist of:
 - (1) Painting of the entire wall, and/or non-permanent structure defaced by graffiti; or
 - (2) Pressure-cleaning or any other method that will successfully remove graffiti from a wall, and/or non-permanent structure, without causing damage.

Sec. I-6. Appeal.

- (a) A property owner who has been served with the notice set forth in section I-5 shall elect either to:
 - (1) Remove or cause to remove the graffiti within the time specified on the notice; or
 - (2) Request an administrative hearing before the special magistrate to appeal the determination of the code compliance officer which resulted in the issuance of the notice.
- (b) An appeal for an administrative hearing shall be held before the special magistrate and shall be accomplished by filing a request in writing to set the hearing for review and mailed to the code compliance officer or designee, not later than two business days after the service of the notice. The remainder of the appeal procedures will be in accordance with the "Code Compliance "sections of this Code.

Sec. 1-7. Cost of graffiti removal as lien on property collection; foreclosure and sale.

(a) Upon failure of the owner of the property to remedy the conditions existing in violation of section 1-5 the code compliance officer shall proceed to have such condition remedied by the city and/or city agent in an effort to abate the nuisance.

(b) City employees and/or the City's agents may enter upon private property to abate the nuisance pursuant to the provisions of this article. No person shall obstruct, impede, or interfere with any city employee and/or City's agent whenever said person is engaged in the work of graffiti abatement pursuant to this article, or in performing any necessary act preliminary to or incidental to such work as authorized or directed pursuant to this article.

(c) Following corrective action taken by the City or City's agent, the code compliance officer shall proceed to have all cost incurred thereof to be and become a lien against such property 30 days after notice of completion of work by the city. Said lien shall be of equal dignity with a lien for special assessments, and with the same penalties and with the same rights of collection, foreclosure, sale and forfeiture provided for special assessment liens. The cost chargeable to the owner shall not exceed the amount of cost as set forth in the notice served to the property owner or owners required herein under section 1-5.

Sec. 1-8. Interested persons may petition to dispute assessed costs.

(a) Any person owning property which has been found to be in violation of this article, and upon which remedial work by the City has been done shall have the right, at any time within 30 days after notice of completion of work under this article, to present to the city clerk a sworn petition stating his or her interest in the property and alleging that in the opinion of the petitioner, the cost of the work exceeds the actual cost thereof or is otherwise erroneous.

(b) Such petition shall be presented to the special magistrate for consideration. The special magistrate may fix and confirm the amount to be charged based on the information presented.

SECTION 2. SPRAY PAINT, BROAD-TIPPED INDELIBLE MARKERS

Sec. 2-1. Sale prohibited.

It shall be unlawful for any person to sell, barter, exchange or otherwise transfer any aerosol containers of spray paint or any broad-tipped indelible marker to any person under the age of 18 years.

Sec. 2-2. Signs required.

Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers shall:

(1) Place a sign in clear public view at or near the display of such products stating: "Graffiti is a crime. Any person defacing real or personal property not his own with paint or any other liquid or device is guilty of a crime punishable by imprisonment for up to six months, with a fine up to \$1,000.00 and 100 hours of community service."

(2) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers stating: "It is a violation of the law punishable by a civil fine of \$100.00 to sell aerosol containers of spray paint or broad-tipped indelible markers to persons under 18 years of age."

(3) Store or cause such aerosol containers or marker pens to be stored either in the direct line of sight from the cash register work station or any other work station normally continuously occupied while the store is open, or in a place not accessible to the public in the regular course of business without employee assistance, pending legal sale or disposition of such marker pens or paint containers.

Sec. 2-3. Penalties; procedures for administration.

(a) Violation of this section shall result in a civil penalty of \$100.00 for a first offense and \$200.00 for all subsequent offenses within 12 months of a prior offense. When three such offenses occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paint and broad-tipped indelible markers for a period of two years.

(b) Procedures for enforcement, appeals and collection of fines by the city shall be as provided in the "Code Compliance" Sections of this Code.

Section 3. Severability. That if any section, subsection, sentence, clause, Phrase, work or amount of this ordinance shall be declared unconstitutional or invalid by competent authority, then the remainder of the ordinance shall not be affected thereby, and shall remain in full force and effect.

Section 4. Repeal of Conflicting Provisions. That all ordinances or parts of ordinances or resolutions of the County Code made inconsistent or in conflict herewith shall be and they are hereby repealed in their entirety as there is conflict or inconsistency.

Section 5. Inclusion in Code. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and made a part of

the City of Doral Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section " or other appropriate word.

Section 6. Effective Date. This Ordinance shall become upon adoption on second reading.

The foregoing Ordinance was offered by Vice Mayor Cabrera, who moved its adoption. The motion was seconded by Councilman Van Name and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Peter Cabrera	Yes
Councilmember Michael DiPietro	Yes
Councilwoman Sandra Ruiz	Yes
Councilmember Robert Van Name	Yes

PASSED AND ADOPTED upon first reading the 12th day of April, 2006.

PASSED AND ADOPTED upon second reading the 10th day of May, 2006.



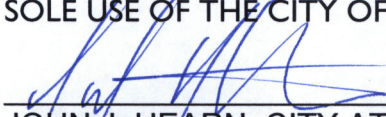
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA-HILL, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE CITY OF DORAL:



JOHN J. HEARN, CITY ATTORNEY
Jacob G Horowitz