



MEETING OF APRIL 18, 2023

TO: Mayor Jordan and City Council
THRU: Kit Williams, City Attorney
FROM: Blake Pennington, Assistant City Attorney
DATE:
SUBJECT: AMEND 130.39 GRAFFITI:

RECOMMENDATION:

BACKGROUND:

Council Member Turk has sponsored an item to amend §130.39 Graffiti of the Fayetteville Code to create a graffiti abatement program.

DISCUSSION:

BUDGET/STAFF IMPACT:

ATTACHMENTS: Agenda Request Amend 130.39 Graffiti, EXHIBIT A - 120622 ADDITIONAL INFORMATION HAND OUT 2022-1051, ORD REPEAL §130.39 GRAFFITI ENACT NEW, Addtl Info Amended Graffiti Abatement Proposal, Proposed Amended Graffiti Abatement Ordinance



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

Received From Kit
Williams
04/04/2023
3:14 P.M



TO: **Mayor Jordan**
City Council
City Clerk Treasurer Kara Paxton

Kit Williams
City Attorney
Blake Pennington
Assistant City Attorney
Jodi Batker
Paralegal

CC: **Susan Norton, Chief of Staff**

FROM: **Kit Williams, City Attorney**

DATE: **April 4, 2023**

RE: **Proposed Amended Graffiti Abatement Ordinance**

I have worked with Council Member Teresa Turk to make clear that the City will properly respect private property rights while removing graffiti. The ordinance is now more focused on quickly removing graffiti from City property and right-of-way. With consent of the property owner or tenant, the City would be empowered (but not required) to remove or paint over, etc. graffiti on private property if viewable from City property or right-of-way.

We also placed a new provision that public utilities operating in City's right-of-way pursuant to a franchise agreement with the City must agree to "promptly remove or abate any graffiti affixed to their equipment or other thing and allow the City to also abate or remove such graffiti without prior notice to the utility."

The current graffiti ordinance will be on Unfinished Business on the April 18th City Council Meeting Agenda. Council Member Turk will probably move to amend it to the version she has approved which is attached to this memo.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §130.39 **GRAFFITI** IN THE *FAYETTEVILLE CODE* TO AUTHORIZE USE OF CITY FUNDS TO ABATE OR REMOVE GRAFFITI ON PRIVATE PROPERTY ON OR VIEWABLE FROM CITY PROPERTY OR RIGHT-OF-WAY

WHEREAS, the existence of graffiti on buildings, structures, such as fences or walls, or utility poles or boxes, located upon city property, city right-of-way, and privately owned property viewable from city property or right-of-way is detrimental to property values, costs the City and private property owners abatement expenditures, degrades the economic vitality of the community, is inconsistent with the City's property maintenance requirements, and damaging to our community aesthetic standards, which thereby makes graffiti a nuisance; and

WHEREAS, establishing a graffiti abatement program will enable the City to remove graffiti from city property and right-of-way and privately owned property with the consent of the owner, manager, or tenant more quickly; and

WHEREAS, the City Council requests the Administration to attempt to obtain consent from the railroad company to authorize City staff to have the right, but not duty, to remove any graffiti from any train trestle in Fayetteville.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends §130.39 **Graffiti** of the *Fayetteville Code* by repealing it and enacting the following:

“(A) *Definition.* For purposes of this section, the term ‘graffiti’ means any inscription, word, figure, design, symbol, or insignia which is marked, etched, scratched, drawn, painted, or otherwise affixed to or placed upon City property, utility property within the City right-of-way or, without the authority or permission of the owner, private property that is viewable from City property or right-of-way.

(B) *Unlawful to apply graffiti.* It is unlawful for any person to apply graffiti upon any City property or City right-of-way (including any utility or other allowed structure on City property or City right-of-way) or upon any structure, fence, wall, dumpster or similar thing on private property without express authority and permission from the property owner.

(C) *Graffiti declared a public nuisance.* Graffiti is detrimental to property values, degrades the aesthetics and attractiveness of the City, causes expenses for the City or private property owners to abate or remove the graffiti, harms the economic vitality of the City and violates the City’s property maintenance requirements and the adopted *International Property Maintenance Code* such that the City Council has determined and now expressly declares that graffiti is a public nuisance which should be promptly removed and kept off of all publicly viewable buildings, structures, utility equipment, and other places.

(D) *City staff empowered to abate or remove graffiti from private property with the consent of the owner or tenant.* Because graffiti is a public eyesore and nuisance, the City has a public purpose to use public funds or staff to abate or remove graffiti from privately owned property that is viewable from City property or City right-of-way with the consent of the owner or tenant.

(E) *All Utilities with a City franchise to use City right-of-way agree to graffiti removal.* By placing or maintaining equipment or other things on City property or right-of-way, all utilities with franchises to use City property or right-of-way agree to promptly remove or abate any graffiti affixed to their equipment or other thing and allow the City to also abate or remove such graffiti without prior notice to the utility. This provision is an amendment to all City franchise agreements if the franchisees use the City right-of-way after June 1, 2023.

(F) *Other remedies remain available to the City.* This section does not preclude the City from seeking the abatement or removal of graffiti through criminal mischief prosecutions, enforcement of the *International Property Maintenance Code*, or other remedies.

Legistar ID No.: 2022- 1051

AGENDA REQUEST FORM

FOR: Council Meeting of December 6, 2022

FROM: Council Member Teresa Turk

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO AMEND §130.39 **GRAFFITI** IN THE *FAYETTEVILLE* CODE TO
CREATE A GRAFFITI ABATEMENT PROGRAM

APPROVED FOR AGENDA:



City Council Member
Teresa Turk

11/10/22

Date



Asst. City Attorney Blake Pennington
Approved as to form

11/14/22

Date