

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

08-081-0

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REGULATING GRAFFITI; AMENDING CHAPTER 34 OF THE DULUTH CITY CODE, 1959, AS AMENDED, BY ADDING A NEW SECTION 34-41.

BY COUNCILOR ANDERSON:

The city of Duluth does ordain:

Section 1. That Chapter 34 of the Duluth City Code, 1959, as amended, be amended by adding to Chapter 34 a new Section 34-41 to read as follows:

Sec. 34-41. Graffiti.

(a) Findings and purpose.

(1) The city council finds that the presence of graffiti and its proliferation results in deterioration of property values and has an overall negative impact on the entire community;

(2) The city council declares the existence of graffiti to be a public nuisance and intends, through the adoption of this ordinance, to create enforcement tools to prevent graffiti vandalism and to establish a program for graffiti removal;

(b) Definitions. For the purposes of this Section, the following terms shall have the meanings stated below:

(1) Administrative lieutenant. The administrative lieutenant of the Duluth police department or her/his designee;

(2) Aerosol paint container. Any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property;

(3) Broad-tipped marker. Any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than 1/4 of an inch, containing ink or other pigmented liquid that is not water soluble;

(4) Etching equipment. Any tool, device, or substance that can be used to make permanent marks on any natural or man-made

surface;

(5) Graffiti. Any inscription, word, figure, painting, symbol or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed by any graffiti implement to any surface of public property or private property without the possessor's permission, or despite such permission, is otherwise deemed a public nuisance by the city council;

(6) Graffiti implement. An aerosol paint container, a broad-tipped marker, gum label, graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface;

(7) Graffiti stick. Any device containing a solid form of paint, chalk, wax, epoxy or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least 1/4 of an inch in width;

(8) Gum label. Any material that adheres to a natural or man-made surface by an adhesive substance;

(9) Owner or property owner. Those shown to be the owner or owners of property on the records of the St. Louis County auditor's office;

(10) Possessor. Those having a superior right of possession, custody or control of property;

(c) Prohibited acts.

(1) Defacement. No person shall intentionally apply graffiti to any natural or man-made surface on any publicly or privately owned property;

(2) Possession of graffiti implements. Unless otherwise authorized by the possessor, it is unlawful for any person to

possess any graffiti implement while:

(A) On public property or private property of another where graffiti is located; or

(B) Within 200 feet of any graffiti located in or on any primary or secondary school building or structure; or

(C) Within 200 feet of any graffiti located in or on any building or structure owned or operated by a governmental entity or agency, religious organization or non-profit organization;

(3) Possession of graffiti implements by minors at or near school facilities. It shall be unlawful for any person under the age of 18 years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or on public property in areas immediately adjacent to those specific locations, or upon private property without the prior written consent of the possessor of such private property. The provisions of this Section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers. The burden of proof in any prosecution for violation of this Section shall be upon the minor student to establish the need to possess a broad-tipped marker.

(4) Furnishing to minors prohibited. It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan or otherwise furnish, or cause or permit to be exchanged, given, loaned or otherwise furnished, any aerosol paint container, broad-tipped marker or graffiti stick to any person under the age of 18 years without the written consent of the parent or guardian of the person;

(d) Graffiti as nuisance.

(1) Declaration. The city council has declared the existence of graffiti on publicly viewable surfaces in violation of this Section to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Section;

(2) Duty of property owner. It is the duty of the owner of the property to which graffiti has been applied to immediately remove the graffiti from the property;

(3) Repeat violations. If a property is subject to three or more occurrences of graffiti within a year, application of anti-graffiti material of a type and nature that is acceptable to the administrative lieutenant may be required for each of the publicly viewable surfaces after notification by the administrative lieutenant, or imposed during improvements or construction activities to the site as determined by the administrative lieutenant;

(e) Removal of graffiti.

(1) At the cost of the perpetrator. The administrative lieutenant may require any person applying graffiti on public or private property to pay for all costs of removal of the graffiti within 24 hours after notice by the city or property owner. The removal must be performed in a manner prescribed by the administrative lieutenant, with materials and colors compatible with existing surfaces, and to a comparable or improved condition before the graffiti application as determined by the administrative lieutenant. Where graffiti is applied by a person under 18 years old, the parents or legal guardian will also be liable for payment of the costs of removal pursuant to Minnesota Statute §540.18. Failure of any person to remove graffiti or pay for the removal will constitute

an additional violation of this Section;

(2) By property owner. In lieu of the procedure set forth in Section 34-41(e)(1), the administrative lieutenant may order that the graffiti be removed by the property owner pursuant to the nuisance abatement procedure herein. Graffiti removal and corrections must be performed within 14 days of being notified in writing by the city. Written notice may be given through service by mail to the owner's address last shown in the records of the office of the St. Louis County auditor, by posting a notice on the property, or by personal delivery to the owner. Where the property is unoccupied or abandoned, service may be by mail to the last known owner as shown in the records of the office of the St. Louis County auditor or by posting on the property. The abatement shall be with materials and colors compatible with existing surfaces and to a comparable or improved condition before the graffiti application as determined by the administrative lieutenant. If the property owner fails to remove graffiti within said time period, the city may commence abatement and cost recovery proceedings for the graffiti removal in accordance with this Section;

(f) Abatement procedure.

(1) Abatement by city. If the owner does not comply with the notice within the time specified, the city may abate the public nuisance;

(2) Notice and hearing. The following notification must be conducted prior to city abatement of the public nuisance. Whenever it is determined that a public nuisance is being maintained or exists on a property, the administrative lieutenant must give 14 day's written notice through service by mail to the owner's address last shown in the records of the office of the St. Louis County

auditor, by posting a notice on the property, or by personal delivery to the owner. Where the property is unoccupied or abandoned, service may be by mail to the last known owner as shown in the records of the office of the St. Louis County auditor or by posting on the property. The notice must state:

(A) A description of the public nuisance;

(B) That the public nuisance must be corrected within 14 days of the service of the notice;

(C) That if the public nuisance is not properly removed or corrected as ordered, the public nuisance will be abated by the city and the costs of abatement will be specially assessed to the property taxes;

(D) That the owner of the property on which the public nuisance is located may in writing request a hearing before the city council;

(E) If a hearing is requested during the 14 day period, the administrative lieutenant must promptly schedule the hearing and no further action on the abatement of the public nuisance may be taken until the city council's decision is rendered. At the conclusion of the scheduled hearing, the city council may cancel the notice to remove or correct the public nuisance, modify the notice, or affirm the notice to remove or correct the public nuisance. If the notice is modified or affirmed, the public nuisance must be disposed of in accordance with the city's written order;

(F) Summary abatement. The enforcing officer may provide for abating a public nuisance without following the procedure required in Section 34-41 (f) when:

1. There is an immediate threat to the

public health or safety;

2. There is an immediate threat of serious property damage; or

3. Any other condition exists that violates state or local law and that is a public health or safety hazard;

4. A reasonable attempt must be made to notify the owner of the intended action and the right to appeal the abatement and cost recovery at the next regularly scheduled city council meeting;

(g) Assessment for graffiti removal.

(1) List of delinquent accounts. On or before June 1 of each year, the administrative lieutenant shall transmit to the city assessor a list of properties which the city has abated under this Section and for which the city has not been paid, together with the amount due with respect to each such property. Such list shall be accompanied by a verified statement that the amounts indicated are in fact due and owing. For each account transmitted, a collection fee in the amount set by city council resolution shall be added to reimburse the city its administrative costs;

(2) Preparation of roll. Upon the receipt of such lists, the city assessor shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed, if known to him, together with a description of each such lot or parcel of land and the amount of such assessment. The assessment roll shall include the collection fee set forth in Section 34-41(g)(1);

(3) Notice. On or before July 1 of each year, the city assessor shall certify the assessment roll to the city council.

The assessor shall give 20 days notice by first class mail to the owner of each lot or parcel of land and any other party shown in the records of the office of the St. Louis County auditor to have a legal interest in said land stating the amount of the assessment, including the collection fee, the description of the property, that the assessment roll is on file in the assessor's office and that any party aggrieved by the assessment may appeal the assessment to the chief of police by filing a written notice of appeal with the chief of police within 20 days after the date of the notice of assessment. Such notice shall indicate that the assessment, including the collection fee, is due and payable to the city on or before October 1 of the current year. Failure to make payment by such date shall render the assessment delinquent;

(4) Appeal to the chief of police. Any party aggrieved by an assessment made pursuant to this Section may appeal such assessment by filing within 20 days after the date of notice of assessment a written notice of appeal with the chief of police. The notice shall state the precise grounds upon which the appeal is taken. The chief of police shall notify the appellant of the time and place of the hearing. At the hearing, the chief of police shall hear and determine all objections made to the regularity of the proceedings or to the correctness of the amount of such assessment or of the amount levied upon a particular lot or parcel of land. If the proceedings are found to be regular and the amounts claimed had been properly billed to the owner of the premises, the chief of police shall correct any errors which may have been found in the assessment and shall thereupon recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution to

reimburse the city its administrative assessment costs. After all appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent;

(5) Certification of delinquent assessments. After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Section, describing the land affected and giving the amount of the assessment, with ten percent penalty added, after which the assessment shall follow the provisions of Section 70 of the City Charter. All accounts, including interest and penalty thereon, collected by the city treasurer for services rendered and paid for by the city under this Section, shall be retained by the city;

(6) Applicability of certain Charter provisions to Chapter. The provisions of sections 64, 65, 66 and 67 of the City Charter with reference to appeals to the district court shall apply to the provisions of this Section in reference to the confirmation of assessments. The other provisions of such sections shall also apply to this Section.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved as to form:

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Attorney

COUNCIL REQUEST/ATTY      JA/JC:tmf      9/12/2008

STATEMENT OF PURPOSE: This ordinance amends Chapter 34 of the City Code to add a section regulating graffiti.