

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

ORDINANCE NO. _____

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

WHEREAS, the existence of graffiti on buildings, structures, such as fences or walls, or utility poles or boxes, located upon public or privately owned property viewable from a public or quasi-public place within the city is detrimental to property values, degrades the community, causes an increase in crime, is inconsistent with the city's property maintenance and aesthetic standards, and is a nuisance; and

WHEREAS, establishing a graffiti abatement program will enable the City to remove graffiti from public and privately owned property in addition to other remedies available to the City and to property owners.

**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 repeals §130.39 **Graffiti** of the *Fayetteville Code* in its entirety and enacts a new §130.39 **Graffiti** as shown in Exhibit A attached hereto and made a part hereof.

PASSED and APPROVED this 6th day of December, 2022.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
KARA PAXTON, City Clerk/Treasurer

EXHIBIT A

130.39 - Graffiti

(A) Definitions.

- (1) Graffiti: For purposes of this section, the term "graffiti" shall mean any inscription, word, figure, design, symbol or insignia which is marked, etched, scratched, drawn, painted or otherwise affixed to or placed upon public or private property located within the city to the extent that the same is not approved by the owner.
- (2) Quasi-public place: Any place, privately owned, but to which the public is invited, which shall include, but is limited to, the following: commercial, industrial and business properties, stores, restaurants, bars, retail business establishments, multi-family housing complexes containing 24 units of more, and their adjoining or related parking areas.

(B) Unlawful to Apply Graffiti; Penalty. It shall be unlawful for any person to apply graffiti upon any public and privately owned structure located on public or privately owned real property within the city. Nothing contained herein shall prevent the city from pursuing any other remedy available for redress of any damage or injury caused by the action of any such person.

(C) Declaration of graffiti as unsightly and a nuisance. The existence of graffiti on buildings, structures, such as fences or walls, or utility poles or boxes, located upon public or privately owned property viewable from a public or quasi-public place within the city is detrimental to property values, degrades the community, is inconsistent with the city's property maintenance and aesthetic standards, and is declared to be a nuisance.

(D) Right of city to remove

- (1) Whenever the city becomes aware, or is notified and determines that graffiti is so located on the exterior of a building or structure (including fences and walls), or utility box or pole, on public or privately owned property viewable from a public or quasi-public place within the city, the city shall be authorized to use public funds for the removal of graffiti from the entire exterior of the building or structure affected, or for the painting of graffiti from the entire exterior of the building affected, but shall not authorize or undertake to provide for the painting of any more extensive area than where the graffiti is located, unless the City determines that a more extensive area is required to be repainted in order to avoid an aesthetic disfigurement to the neighborhood or community.
- (2) All incidents of graffiti should be reported to the Police Department, who may investigate the graffiti and notify the owner of the property or the property owner's agent and/or utility company, concerning the city's graffiti removal program. The Police Department may

also provide information on how to contact the appropriate division or department for the removal of the graffiti. The Police Department may also notify the appropriate division or department of the exact location of the graffiti and the name of the person to be contacted. In the event the owner of the property or the property owner's agent and/or utility company cannot be reached after a period of five (5) business days since receiving the complaint, the city will then have the right to enter upon private property to the extent necessary to take corrective action.

If the graffiti in question is deemed to be hate speech, the city will initiate an accelerated timeline for removal. In hate speech graffiti circumstances, if the owner of the property or the property owner's agent and/or utility company cannot be reached after a period of one (1) business day since receiving the complaint, the city will then have the right to enter upon private property to the extent necessary to take corrective action.

(3) Upon notification by the Police Department concerning the necessity to remove the graffiti, the city may make contact with the owner of the property or the property owner's agent and request that they sign a graffiti abatement identification and permission form allowing the city to enter on the property and remove the graffiti. The document will release the city, its officers, agents, and employees of and from any and all liability, claims, demands, causes of action, or obligations of whatsoever arising out of or in any way related to entry upon the property and for the removal of the graffiti. In the event the owner of the property or the property owner's agent and/or utility company cannot be reached after a period of five (5) business days since receiving the complaint and after contact has been attempted, the city will then have the right to enter upon private property to the extent necessary to take corrective action.

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(4) In the event the owner of the property or the property owner's agent, refuses to sign the document which authorizes the city to remove the graffiti, the city may give or cause to be given notice to the owner of the property or the property owner's agent, to take corrective action and remove the

graffiti from the property within five (5) business days from the date the notice is served. If the graffiti is not removed within five (5) business days after receipt of notice, then the city shall have the right to enter upon private property to the extent necessary to take corrective action to abate the nuisance.

If the graffiti in question is deemed to be hate speech, the city will initiate an accelerated timeline for removal in which case the city will take corrective action after one (1) business days from the date the notice is served. If the graffiti is not removed within one (1) business days after receipt of notice, then the city shall have the right to enter upon private property to the extent necessary to take corrective action to abate the nuisance.

- (5) In the event that graffiti is discovered and reported on private property such as buildings, structures, fences, walls, or utility poles/boxes, and after thorough documentation by the city, where it is not reasonable to find the property owner or the property owner's agent or utility company, or in cases where immediate removal of graffiti is deemed necessary (due to profanity, location, etc.), and since removal of graffiti in a timely manner is necessary, the city will then have the right to enter upon private property to the extent necessary to take corrective action.
 - (6) In any case in which the city enters upon private property for the removal of graffiti without actual notice to the owner of the property or the property owner's agent, the city shall post a notice upon the front of the residence regarding the actions taken by the city to abate the nuisance.
 - (7) In the event the City verifies that the owner of the property or the property owner's agent has not approved the graffiti but refuses to sign the document which authorizes the City to remove the graffiti, the City should give or cause to be given notice to the property owner or property owner's agent to take corrective action and remove the graffiti from the property within five (5) business days after service of the notice, and the owner or owner's agent has not filed a written objection to the removal of the graffiti with the City Clerk within five (5) business days after the notice, then the City shall have the right to enter upon private property to the extent necessary to take corrective action to abate the nuisance.
 - (8) If the owner or their agent has filed a written objection to the City's removal of the graffiti including accurate contact information within five (5) business days with the City Clerk, the Chief of Staff or designee shall hold a due process hearing within a week after attempted notice to the appellant using the provided contact information. The Chief of Staff or designee shall inform the appellant of the reasons for the planned graffiti removal during the due process hearing and give the appellant an opportunity to respond and justify the non-removal of the suspected graffiti. This objection process does not apply to hate speech graffiti.
- (E) *Cultural Arts and Creative Safe Space*. In conjunction with the implementation of the graffiti abatement program, if the city seeks graffiti abatement restitution funds, at least half of those funds will be used for the public arts fund. Additionally, the city

will pilot a creative safe space in the form of a wall to be used by graffiti artists without fear of legal retribution.

(F) *Other remedies available to the city.* This section does not preclude the city from seeking the removal of graffiti through other available remedies, including those under the Arkansas criminal mischief statutes and the *International Property Maintenance Code*.