

RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 91-12

Passed October 22, 2012

9/5/12-tlf
(Ordinance, Rules & Claims)

Ordinance No. 91-12

An ordinance defining Graffiti ("Graffiti"), establishing the offense and penalties for the application of Graffiti, providing for the abatement of Graffiti, and establishing a civil penalty for a property owner's failure to remove Graffiti from his/her/its property in a timely manner.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON ("City"), COUNTY OF STARK, STATE OF OHIO:

Section 1. DEFINITION:

Graffiti: Means any unauthorized inscription, design, word, figure or mark of any type, drawn, marked, painted, etched, scratched or written upon any property located within the City, which is visible from a public right-of-way or other public or quasi-public location located within the City.

Section 2. PROHIBITED ACTS:

It shall be unlawful for any person to apply Graffiti to any real or personal property located within the City without the prior consent of the property owner, the property owner's agent, occupant, lessee, or tenant, or any other person in rightful control and possession of the property.

Section 3. GRAFFITI AS A NUISANCE:

(a) Graffiti in violation of this ordinance is detrimental to the health, safety, and welfare of the City and is therefore expressly declared to be a public nuisance subject to the removal and/or abatement provisions specified in this ordinance.

(b) It is the duty of an Owner of real property in the City ("Owner") to, at all times, keep his/her/its real property, and all personal property located on his/her/its real property, free from Graffiti, and otherwise comply with the requirements of this ordinance.

Section 4. GRAFFITI REMOVAL:

(a) Removal by the Perpetrator. Any person who is found guilty of or pleads guilty to applying Graffiti on property located within the City ("Perpetrator") has the duty to remove the Graffiti within twenty-four (24) hours after receiving notice from the Director of Administration or his/her designee ("Director of Administration"). The notice shall be served on the Perpetrator by regular mail, and removal of the Graffiti shall be accomplished in the manner prescribed in the notice. The provisions of this section shall be in addition to the provisions of any other law concerning offenses against property rights and shall in no way limit such other provisions.

(b) Owner Responsibility. If the Director of Administration is, through no fault of his/her own, unable to identify the Perpetrator at the time that he/she becomes aware of the existence of Graffiti within the City in violation of any provision(s) of this ordinance, or if the Perpetrator fails to remove the Graffiti according to the subsection 4(a) above, the Graffiti shall be removed pursuant to the following provisions:

1. Notice to Remove Graffiti.

- a. The Director of Administration shall serve a written Notice to Remove Graffiti ("Notice") on the Owner and any rightful occupant(s) of the real property upon which the Graffiti is located. The Notice shall be served by personal service, unless the Owner resides outside of the City, or, through no fault of

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his/her own, the Director of Administration is unable to accomplish personal service. Where personal service is not required by this subsection, the Director of Administration shall accomplish service by posting the Notice in a conspicuous place on the real property upon which the Graffiti is located, by mailing the Notice by regular mail to the address of said real property, and/or by mailing the Notice by regular mail to the address to which the Stark County Auditor mails the tax bill for the affected property.

b. The Notice shall state that the Director of Administration has determined that Graffiti exists in violation of this ordinance and describe the Graffiti that shall be removed. The Notice shall inform the Owner of the date, time, and location of a hearing during which the City of North Canton Mayor's Court ("Mayor's Court") shall review the validity of the Notice. The Notice shall also inform the Owner that he/she/it has ten (10) business days from the date of service to either remove the Graffiti, notify the Director of Administration, in writing, that he/she/it consents to allowing the City to enter his/her/its real property and remove the Graffiti and shall reimburse the City for all expenses associated with the removal, or notify the Director of Administration, in writing, that he/she/it wishes to contest the Notice at the abovementioned Mayor's Court hearing.

i. If the Owner chooses to allow the City to enter his/her/its real property and remove the Graffiti, the Owner shall first sign a release, provided by the Director of Administration, thereby releasing the City from liability for damage to property or personal injury in connection with the removal.

ii. If the Owner chooses to inform the Director of Administration, in writing, that he/she/it wishes to contest the Notice at the abovementioned Mayor's Court hearing, then the Owner's notification to the Director of Administration shall include the Owner's name, address, and phone number, the name(s), address(es), and phone number(s) of any representative(s) who shall appear at the hearing on the Owner's behalf, and a brief statement of the reason(s) why the Owner wishes to contest the Notice. In addition, the Owner's notification to the Director of Administration shall be accompanied by a deposit of fifty dollars (\$50.00) to partially compensate the City for the costs associated with the hearing.

2. Order to Remove Graffiti.

a. If the Director of Administration determines that Graffiti exists that is hateful, defamatory, racially offensive, ethnically offensive, obscene, vulgar, sexually explicit, or otherwise so offensive in nature that it requires immediate action to protect the health, safety and welfare of the City, the Director of Administration shall issue an Order to Remove Graffiti ("Order"). The Order shall be effective immediately, and the Director of Administration shall serve the Order on the Owner and any rightful occupant(s) of the real property upon which the Graffiti is located by the fastest method of service available under the circumstances, as determined by the Director of Administration.

b. The Order shall state that the Director of Administration has determined that Graffiti exists in violation of this ordinance and is of such a nature that immediate action is necessary to protect the public health, safety, and welfare of the City. The

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c. Order shall describe the Graffiti that shall be removed, and it shall inform the Owner of the actions that he/she/it shall take and the amount of time that he/she/it has to act. The Order shall also inform the Owner of the date, time, and location of a hearing during which the Mayor's Court shall review the validity of the Order. In addition, the Order shall inform the Owner that he/she/it may notify the Director of Administration, in writing, that he/she/it wishes to contest the Order at the abovementioned Mayor's Court hearing.

i. If the Owner chooses to inform the Director of Administration, in writing, that he/she/it wishes to contest the Order at the abovementioned Mayor's Court hearing, then the Owner's notification to the Director of Administration shall include the Owner's name, address, and phone number, the name(s), address(es), and phone number(s) of any representative(s) who shall appear at the hearing on the Owner's behalf, and a brief statement of the reason(s) why the Owner wishes to contest the Order. In addition, the Owner's notification to the Director of Administration shall be accompanied by a deposit of fifty dollars (\$50.00) to partially compensate the City for the costs associated with the hearing.

ii. The Owner's decision to inform the Director of Administration, in writing, that he/she/it wishes to contest the Order at the abovementioned Mayor's Court hearing shall not serve to suspend the Owner's obligation to comply with that Order.

3. Mayor's Court Hearing to Review Validity of Notice or Order.

a. The Director of Administration shall schedule a hearing during which the Mayor's Court shall review the validity of a Notice on a date that the Mayor's Court is already scheduled to be in session.

b. The Director of Administration may schedule a hearing during which the Mayor's Court shall review the validity of an Order on a date that requires the Mayor's Court to hold a previously unscheduled session.

a. Hearing Procedure.

i. The Director of Administration shall be given an opportunity to be heard and to present evidence as to why the Notice or Order should be affirmed. The failure of the Director of Administration or his/her representative to appear at the hearing shall be grounds for a summary dismissal of the Notice or Order.

ii. The Owner or his/her/its representative(s) shall be given an opportunity to be heard and to present evidence as to why the Notice or Order should be modified or dismissed. The failure of the Owner or his/her/its representative(s) to appear at the hearing shall be grounds for a summary affirmation of the Notice or Order.

iii. Upon consideration of the evidence presented at the hearing, the Mayor's Court shall affirm, modify, or dismiss the Notice or Order. The Mayor's Court shall also have the power to grant the City the right to enter an Owner's property and remove Graffiti at the Owner's expense, as well as the power to enter any order that the Mayor's Court

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deems necessary in the interest of the health, safety, and welfare of the City.

iv. If the Mayor's Court decides to dismiss the Notice or Order, the City shall refund the Owner his/her/its entire deposit and cover all court costs.

v. The Owner or his/her/its representative(s) shall be notified forthwith, in writing, of the Mayor's Court's decision.

vi. Any person aggrieved by the decision of Mayor's Court may seek relief therefrom pursuant to R.C. Chapter 1905.

Section 5. REMEDY OF THE CITY:

(a) After the City receives authorization from the Mayor's Court to enter an Owner's property and remove Graffiti at the Owner's expense, the Director of Administration shall direct all necessary labor to perform such services.

(b) No person shall refuse to allow access to any property for the purpose of removing Graffiti or to interfere with the removal of such Graffiti in accordance with this ordinance.

(c) The expense incurred by the City to remove Graffiti, including court costs, and any applicable fines shall be reported to the Director of Finance, who shall mail a statement and invoice thereof to the property Owner. If after thirty (30) days, the amount remains unpaid, pursuant to R.C. § 731.54, the Director of Finance shall certify the total amount of the expense, the name of the Owner, and a sufficient description of the premises to the Stark County Auditor, to be entered upon the tax duplicate, to be a lien on the land from the date of entry, to be collected as other taxes and assessments and returned to the City to be deposited into its general fund.

Section 6. NONLIABILITY OF THE CITY

No City officer, agent, or employee shall be personally liable for any damage or injury resulting from a determination, order, or action required or permitted in the discharge of duties under this ordinance. The City shall defend and indemnify the Director of Administration and any other employee or official specifically designated and authorized to make official determinations, orders, or actions against judgments or liabilities that may arise as a result of official action taken in the discharge of duties under this ordinance.

Section 7. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 8. That this ordinance shall take effect and be in full force from and after the earliest period allowed by law.

North Canton, OH

Passed: 10/22/12


MAYOR

SIGNED: 10/22 2012

ATTEST:


CLERK OF COUNCIL

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