

**CITY OF CORAL GABLES, FLORIDA**

**ORDINANCE NO. 2008-04**

AN ORDINANCE OF THE CITY OF CORAL GABLES COMMISSION AMENDING CITY CODE CHAPTER 34, ENTITLED "NUISANCES," ARTICLE VI, ENTITLED "GRAFFITI; GRAFFITI REMOVAL", ADDING SECTION 34-108, ENTITLED "DEFINITIONS", SECTION 34-109, ENTITLED "PROHIBITIONS", SECTION 34-110, ENTITLED "POSSESSION OF SPRAY PAINT & MARKERS, SECTION 34-111, ENTITLED "DECLARED A NUISANCE", SECTION 34-112, ENTITLED "RESPONSIBILITY OF PROPERTY OWNER(S); GRAFFITI REMOVAL AND NOTICE", SECTION 34-113, ENTITLED "APPEAL", SECTION 34-114, ENTITLED "FAILURE TO COMPLY; COST OF GRAFFITI REMOVAL AS LIEN ON PROPERTY-COLLECTION, FORECLOSURE AND SALE", AND SECTION 34-115, ENTITLED "INTERESTED PERSONS MAY PETITION TO DISPUTE ASSESSED COSTS"; AND REPEALING ALL ORDINANCES INCONSISTENT HEREWITH.

**WHEREAS**, the City Commission finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community; and

**WHEREAS**, the City Commission finds that stringent measures to attack graffiti are necessary to serve and protect the best interests of the citizens of Coral Gables; and

**WHEREAS**, the immediate removal of graffiti is the most effective deterrent to its reoccurrence; and

**WHEREAS**, graffiti depreciates the value of the defaced property as well as the surrounding neighborhood; and

**WHEREAS**, the existence of graffiti on public or private property in violation of this ordinance is expressly declared to be a public nuisance and therefore, is subject to the removal and abatement provisions specified in this Ordinance; and

**WHEREAS**, it is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti; and

**WHEREAS**, in order to preserve the integrity of the neighborhoods of the City and to protect the health, safety and welfare of the general public, the City Commission finds it is in the best interest of the citizens to authorize the removal or abatement of graffiti from public or private permanent structures located within Coral Gables;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF CORAL GABLES:

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

**SECTION 2.** That Chapter 34, "Nuisances" Article VI. "Graffiti, Graffiti Removal" of the "Code of the City of Coral Gables," is hereby amended as follows:

## **ARTICLE VI. GRAFFITI, GRAFFITI REMOVAL.**

### **Sec. 34-108. Definitions.**

Unless it is apparent from the context that another meaning is intended, the following words 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.

***Bona fide Evidence of Majority*** means a document issued by a federal, state, county, or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

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

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

***Code Enforcement 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 zone. "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 government; (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 or other similar substance, adhesive label or notice (general print or illustrated), or other inscribed or engraved material on public or private permanent structures located on publicly or privately owned real property within the City.

***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 of Coral Gables as their names and addresses are shown upon the records of the Property Appraiser Department.

*Public Right-of-Way* means any road, parkway, alley, swale, sidewalk or other 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. 34-109. 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 what is commonly known as "graffiti."

(b) Any person violating this section shall be punished by a fine of two hundred and fifty dollars (\$250.00) for the first offense; five hundred dollars (\$500.00) for the second offense; and one thousand dollars (\$1,000.00) for each subsequent offense; 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 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 defendant's offense 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 a minimum of thirty (30) hours of monitored community service in the removal of graffiti. At least one parent or guardian of a minor shall be in attendance a minimum of fifty percent (50%) of the period of assigned community service.

(1) Reasonable effort shall be made to assign a type of community service that is reasonably expected to have the most rehabilitative effect, including community service that involved graffiti removal.

(e) Any person who shall provide information, which leads to the actual payment of a fine by a violator, is entitled to receive from the city a reward of up to Five Hundred Dollars (\$500.00). The City Manager, or his or her designee, shall determine whether a particular reward shall be divided among persons based on the information provided and the number of persons providing it, but in no event shall the total reward relating to a particular violation exceed Five Hundred Dollars (\$500.00). No person employed by the City shall be eligible for such reward.

**Sec. 34-110 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 eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped, indelible 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 eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent, manager, or personnel in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession while on his or her property.

(d) Possession of spray paint and markers by minors while on school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations is prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped, indelible marker while on any school property except in the company of a supervising adult. The provisions of this section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from 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.

(e) Any person violating this section shall be punished by a fine of two hundred and fifty dollars (\$250.00) for a first offense, and five hundred dollars (\$500.00) for a second offense, and one thousand dollars (\$1,000.00) for each subsequent offense.

(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 property to include the fine and administrative costs.

(f) There is hereby created the City Anti-Graffiti Trust Fund. All civil fines paid by violators of this section shall be placed in the Fund. The City Manager or his or her designee shall direct the expenditure of monies in the Fund.

### **Sec. 34-111      Declared a Nuisance**

The creating or maintaining of unauthorized application of paint, ink, chalk, dye or other similar substance, or other inscribed or engraved material on public or private structures located on publicly or privately owned real property in the City is hereby declared to be nuisance.

### **Sec. 34-112      Responsibility of Property Owner(s); Graffiti Removal and Notice**

It shall be unlawful for any person who is the owner or who has primary responsibility for control of the property or for repair or maintenance of the property in the City to permit property that is deface with graffiti to remain defaced for a period as specified below:

(a) Maintenance or allowance of graffiti to exist for more than forty-eight (48) hours on a commercial property, or seven (7) calendar days on a residential property is prohibited.

(b) Whenever the City becomes aware of the existence of graffiti on any property, a code enforcement 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 or to the person in possession of the premises described on the notice.

(1) Commercial Property. For commercial property, the property owner or the property owner's agent or manager shall take corrective action within seventy-two (72) hours from the receipt or delivery of the notice listed within this section.

(2) Non-Commercial Property. For non-commercial property, the property owner, or property owner's agent shall take corrective action within seventy-two (72) hours from the receipt or delivery of the notice listed within this section.

(c) City will waive painting permit requirements for abating graffiti, subject to the use of the same colored exterior paint.

(d) Graffiti abatement will 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.

(e) Such notice shall be given by certified mail, return receipt requested; or by hand delivery by code enforcement officer to the owner of the property described, to the "home of record," as recorded in the current county tax rolls, and shall be deemed complete and sufficient notice when so deposited in the United States mail with proper postage prepaid. The notice to remove graffiti shall have substantially the following form:

DATE

NOTICE TO REMOVE GRAFFITI

TO THE OWNER, AGENT OF THE OWNER, OR PERSON MANAGING THE PROPERTY  
HEREINAFTER DESCRIBED

YOUR ATTENTION IS HEREBY DIRECTED TO THE PROVISIONS OF CHAPTER 16,  
ARTICLE VI OF THE CITY CODE OF CORAL GABLES, FLORIDA. PURSUANT THERETO,  
YOU ARE HEREBY NOTIFIED THAT GRAFFITI WHICH IS DECLARED A NUISANCE IN  
THE CITY OF CORAL GABLES EXISTS ON PREMISES SPECIFICALLY DESCRIBED AS

WHICH IS INJURIOUS TO THE HEALTH SO AS TO  
INTERFERE WITH THE COMFORTABLE ENJOY- MENT OF LIFE OR PROPERTY, WHICH  
NUISANCE AFFECTS AT THE SAME TIME AN ENTIRE COMMUNITY OR  
NEIGHBORHOOD, OR ANY CONSIDERABLE NUMBER OF PERSONS, ALTHOUGH THE  
EXTENT OF THE ANNOYANCE OR DAMAGE INFILCTED UPON INDIVIDUALS MAY BE  
UNEQUAL. YOU ARE THEREFORE NOTIFIED AT ONCE, AND IN ANY EVENT WITHIN  
(72 HOURS-COMMERCIAL, OR RESIDENTIAL) FROM THE RECEIPT OF THIS NOTICE,  
TO REMOVE THE GRAFFITI FROM THE PROPERTY AND THEREAFTER TO KEEP THE  
PROPERTY FREE THEREFROM.

IN THE EVENT YOU FAIL TO COMPLETE SUCH WORK WITHIN THE PERIOD  
HEREINABOVE MENTIONED, THE CITY OF CORAL GABLES SHALL CAUSE THE SAME  
TO BE REMOVED AND THE COST OF SUCH WORK WILL BE IMPOSED AS A LIEN UPON  
THIS PROPERTY. THE ESTIMATED COST TO REMEDY THIS CONDITION WOULD BE  
\_\_\_\_\_, PLUS \$75.00 FOR ADMINISTRATIVE CHARGES, FOR A TOTAL COST OF  
\_\_\_\_\_

DATED AT CORAL GABLES, FLORIDA THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.

OFFICER

**Sec. 34-113      Appeal**

(a) A property Owner, or any person who may be in possession or who has the right to possess  
such property to at all times, who has been served with notice pursuant to  
Section 34-112 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 a hearing officer to appeal the determination  
of the inspector which resulted in the issuance of the notice.

(b) An appeal for administrative hearing shall be accomplished by filing a request in writing to set the hearing for review and mailed to the code enforcement officer or designee, not later than twenty-four (24) hours after the service of the notice.

- (c) If the named violator, after notice, fails to correct the violation (within the time frame specified), or to timely request an administrative hearing before a hearing officer, such failure shall constitute a waiver of the violator's right to an administrative hearing before a hearing officer. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.
- (d) The remainder of the appeal procedures will be in accordance with Section 101-186 through Section 101-190 of the City Code, with no civil penalties imposed, except for administrative costs of hearing.

**Sec. 34-114 Failure to comply; 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 34-112, the code enforcement officer shall proceed to have such condition remedied by the City and/or City agent in an effort to abate the nuisance.

(b) Authority to enter upon. Specific authority is hereby granted the city to enter upon improved or unimproved properties 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) Authority to impose penalties; lien. Following corrective action taken by the City or City's agent, the code enforcement officer shall proceed to have all cost incurred thereof to be and become a lien against such property thirty (30) days after notice of completion of work by the City, to the same extent and character as the lien for special assessments, and with the same penalties and with the same rights of collections, foreclosure, sale and forfeiture as outlined 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 34-112.

(d) Cumulative effect. This power conferred by subsections (a) and (b) of this section is cumulative in addition to any other powers, which the city now has or may hereafter have.

**Sec. 34-115 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 thirty (30) days after publication of the notice of completion of work under this article, to present to the City Clerk a sworn petition stating his 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 Hearing Officer for, his or her consideration at the next regular meeting, provided at least thirty (30) days has intervened between the time of the filing of such petition and the date of such meeting, at which time and place the Hearing Officer shall consider the same and make due inquiry into the questions involved. The Hearing Officer may fix and confirm the amount to be charged based on the information presented.

### **SECTION 3. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

### **SECTION 4. REPEALER.**

All ordinances or parts of ordinances in conflict herewith, are and the same are hereby repealed.

### **SECTION 5. CODIFICATION.**

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

### **SECTION 6. EFFECTIVE DATE.**

This ordinance shall become effective thirty days from the date of its passage and adoption by the City Commission.

PASSED AND ADOPTED THIS ELEVENTH DAY OF MARCH, A.D., 2008.

(Moved: Anderson / Seconded: Kerdyk)

(Yea: Withers, Anderson, Cabrera, Kerdyk, Slesnick)

(Unanimous: 5-0 Vote)

(Agenda Item: E-1)

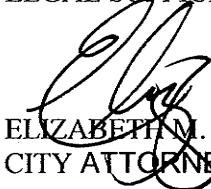
APPROVED:

  
DONALD D. SLESNICK II  
MAYOR

ATTEST:

  
WALTER J. FOEMAN  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

  
ELIZABETH M. HERNANDEZ  
CITY ATTORNEY