

ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, AMENDING CHAPTER 54, MISCELLANEOUS OFFENSES, OF THE SAN MARCOS CITY CODE BY ADDING ARTICLE 4, POSSESSION OF GRAFFITI IMPLEMENTS; DEFINING AND ESTABLISHING RESTRICTIONS ON THE POSSESSION OF GRAFFITI IMPLEMENTS; ESTABLISHING PENALTIES FOR THE VIOLATION THEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

RECITALS:

1. The City of San Marcos recognizes that graffiti that is visible from a public place, public right-of-way, or the property of others is detrimental to the safety and welfare of the public, invites vandalism, additional graffiti, and other criminal activities, tends to reduce the value of private property, and produces property blight adverse to the maintenance and continuing development of the City of San Marcos. The City of San Marcos desires to prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property.

2. The City Council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city.

3. The City Council intends, through the adoption of this Article, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The Council does not intend for this Article to conflict with any existing anti-graffiti state laws.

4. For the reasons stated above, the City Council finds and determines that the adoption of this ordinance is in the interest of the safety and welfare of the public.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 54, Miscellaneous Offenses, of the San Marcos City Code is hereby amended by adding a new Article 4, Possession of Graffiti Implements to read as follows: (underlining indicates added text):

ARTICLE 4. POSSESSION OF GRAFFITI IMPLEMENTS

Sec. 54.082. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aerosol paint container shall mean any aerosol container that is adapted or made for the purpose of applying spray paint or any other substance capable of defacing property.

Felt tip marker shall mean an indelible marker or similar implement with any size tip.

Graffiti shall mean a drawing or the inscribing of a message, slogan, sign or symbol or mark of any type that is made on any public or private building, structure or surface, and that is made without permission of the owner.

Graffiti implement shall mean any aerosol paint container, any type of felt tip marker or paint stick or etching tool capable of scarring or otherwise defacing glass, metal, concrete, plastic, brick, stone or wood.

Guardian shall mean any person to whom custody of a minor has been given by a court order.

Owner shall include, but not be limited to, any equitable owner, any person having a possessory right to the land or building or the person occupying it, any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, or any person, individual, corporation, or partnership in apparent control of the property or any agent or employee of any of the foregoing.

Paint stick or graffiti stick shall mean any device containing a solid form of paint, chalk, wax, epoxy, or other similar substances capable of being applied to a surface by pressure, and upon application, leaving a visible mark.

Parent shall mean a person who is the natural or adoptive parent of a person. As used herein, the term "parent" shall also include a court appointed guardian or other person 18 years of age or older, authorized by the parent, by a court order, or by the court appointed guardian to have the care and custody of a person.

Sec. 54.083. Offenses.

(a) It shall be unlawful for any person to have in his or her possession any graffiti implement in any public park, public school ground, public library, public playground, public swimming pool, public recreational facility, any or other public

grounds or public buildings in the city when such premises are closed to the public.

(b) It shall be unlawful for any person to have in his or her possession, for the purpose of defacing property, any graffiti implement within 10 feet of any underpass, overpass, bridge abutment, storm drain, or similar type of infrastructure.

(1) A person is presumed to possess the graffiti implement with the intent to make graffiti on such property if while within 10 feet of the infrastructure he possesses on or about his person at least:

a. one aerosol paint container; or

b. two graffiti implements other than an aerosol paint container.

(2) Before taking any enforcement action under subsection (b)(1) of this section, a police officer shall ask the apparent offender's reason for being within 10 feet of the underpass, overpass, bridge abutment, storm drain, public right-of-way, or other similar type of infrastructure with a graffiti implement and whether the apparent offender has the consent of the property owner to be on the property and to possess the graffiti implement. The officer shall not issue a citation or make an arrest under subsection (b)(1) of this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense described in section 54.084 is present.

(c) It shall be unlawful for any person to have in his or her possession any graffiti implement while on private property not open to the public without the consent of the owner.

(d) A person who applied graffiti commits an offense every day the person fails to remove the graffiti and restore the property to its original condition.

(e) It shall be an offense for the parent or legal guardian of a child between the ages of ten and 17 years of age to intentionally, knowingly, recklessly, or with criminal negligence allow the child who has previously received one or more citations for violations of this section to violate the provisions of subsection (a), (b) or (c) of this section.

Sec. 54.084. Defenses.

It shall be an affirmative defense to prosecution under sections 54.083 (a) and (b) if the person uses the graffiti implement in their employment or in connection with a school, civic, or religious activity or has written permission from the director or owner of the premises to engage in an authorized activity utilizing the implements.

Sec. 54.085. Penalties.

Violation of any of the provisions of this Article shall be a misdemeanor offense and shall be punishable by a fine of not less than \$50.00 nor more than \$500.00 for the first offense and a fine of not less than \$100.00 nor more than \$500.00 for the second offense. The court shall have discretion to provide other means of punishment which may include community service.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. This ordinance will take effect after publication of its caption in a newspaper of general circulation.

PASSED AND APPROVED on first reading on

PASSED, APPROVED AND ADOPTED on second reading on

Susan Narvaiz
Mayor

Attest:

Approved:

Sherry Mashburn
City Clerk

Michael J. Cosentino
City Attorney