

**ORDINANCE NO. 21-19**

**AN ORDINANCE OF THE CITY OF KENEDY, TEXAS, AMENDING THE CODE OF ORDINANCES, CHAPTER 62 OFFENSES ADDING ARTICLE IV GRAFFITI, SECTIONS 62-125 THROUGH 62-136; PROVIDING FOR A PENALTY AS A CLASS C MISDEMEANOR AND A FINE IN AN AMOUNT NOT TO EXCEED \$500.00; PROVIDING A REPEALING CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Kenedy, as a general law city, has the authority as provided under the state constitution and statutes to adopt ordinances providing for the operation of its government and the conduct of its governing body; and,

**WHEREAS**, the City of Kenedy has established Chapter 62 Offenses in the City of Kenedy Code of Ordinances; and

**WHEREAS**, the City Council desires to amend and supplement its regulations as provided by and consistent with Texas law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KENEDY, TEXAS:**

**Section 1.** That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

**Section 2.** The City of Kenedy Code of Ordinances Chapter 62 Offenses is hereby amended and updated as set forth in Exhibit A.

[Note – additions to the current code of ordinances are shown as underlined and deletions are shown as ~~strikethrough~~]:

**Section 3. Penalty.** That a violation of this Ordinance shall be an offense punishable upon conviction as prescribed in Chapter 62, Section 62-135 of the City's Code of Ordinances.

**Section 4. Repealer.** This ordinance shall be cumulative of all other ordinances of the City of Kenedy, and this ordinance shall not operate to repeal or affect any other ordinances of the City insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, are hereby repealed. The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to

accrue or as affecting any rights of the City of Kenedy under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

**Section 5. Severability.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.

**Section 6.** That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

**Section 7. Effective Date.** This Ordinance will take effect upon its adoption by the City Council and publications requirements as required by law.

PASSED AND APPROVED this 14th day of December, 2021.

CITY OF KENEDY, TEXAS

By: \_\_\_\_\_

  
Joe Baker, Mayor

ATTEST:

  
\_\_\_\_\_

Ruby Mowles, City Secretary



## EXHIBIT "A"

### ARTICLE IV. - GRAFFITI

#### Sec. 62-125. Definitions.

For the purposes of this article, the following definitions shall apply:

Director shall mean the director of the department designated by the city manager to enforce and administer this article or the director's authorized representative.

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

Graffiti shall mean any unauthorized inscription, word, letter, figure, symbol or design visible from a public place, public right-of-way or another person's property that is marked, etched, scratched, drawn, painted or made in any manner on any surface of tangible property regardless of its content or nature and regardless of the nature of the material of the structural component or property. It shall be a rebuttable presumption that the inscription, word, letter, figure, symbol or design was unauthorized if:

- (a) The graffiti is inconsistent with the design and use of the subject property;
- (b) There is no specific written authorization by the owner on file with the department for the graffiti; or
- (c) The person causing the graffiti was unknown to the owner.

Graffiti implement shall mean any aerosol paint container, any type of felt tip marker, paint stick, etching tool, or adhesive materials to include stickers or items capable of scarring or otherwise defacing glass, metal, concrete or wood.

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

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, "parent" shall also include a court appointed guardian or other person eighteen (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.

Property 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, association or partnership in apparent or actual control of the property or any agent or employee of any of the foregoing.

Sticker shall mean any item that is attached with adhesive material capable of scarring or otherwise defacing glass, metal, concrete or wood.

Unauthorized shall mean without the specific written consent of the owner on file with the department or without authority of law, regulation or ordinance.

Written authorization shall mean the written consent of the property owner to allow graffiti on his property. Said written consent shall be on a form proscribed by the department and filed with the department prior to the placement of any authorized graffiti.

**Sec. 62-126. Causing graffiti on property unlawful.**

It is a violation of the Texas Penal Code § 28.08 and shall be unlawful for any person to knowingly place or cause to be placed any graffiti upon any surface of public or private buildings, structures or other facilities or upon any natural features of public or private property. Penalty is as provided in the Texas Penal Code § 28.08.

**Sec. 62-127. Possession of graffiti implements unlawful.**

- (a) It shall be unlawful for any person to have in his or her possession any graffiti implement in any public park, public or private school ground, public library, public playground, public swimming pool, public recreational facility, any public right-of-way, or any other public grounds or public buildings in the city when any of the above 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 while on private property not open to the public. The graffiti implement shall be presumed to be for the purpose of defacing property if it is in the holder's possession while the holder is on private property closed to the public.
- (c) It shall be an offense for the parent or legal guardian of a child under seventeen (17) years of age to intentionally, knowingly, recklessly, or with criminal negligence allow the child to violate the provisions of this article.
- (d) It shall be an affirmative defense to prosecution 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. 62-128. Graffiti declared a nuisance.**

Any graffiti is hereby declared to be a public nuisance as it:

- (1) Tends to reduce the value of private property;
- (2) Invites vandalism, additional graffiti, and other criminal activities;
- (3) Produces urban blight; and
- (4) Is detrimental to the safety and welfare of the public.

**Sec. 62-129. Owner responsibility and graffiti removal.**

- (a) It shall be unlawful for any property owner to fail to abate or cause the abatement of graffiti from his or her property after receiving notice of the nuisance and being given an opportunity to effect the abatement within the time allowed by this article unless otherwise exempted.
- (b) This section shall not apply:
  - (1) To property that is residential owner-occupied or is a commercial property occupied by an ongoing business;
  - (2) To graffiti located on transportation infrastructure; or
  - (3) In cases in which the removal of the graffiti would create a hazard for the person performing the removal.



- (c) Prior to any enforcement efforts by the city, the director shall inform the property owner that the city will remove the graffiti from the owner's property free of charge if the owner provides written consent for the removal and releases the city, its contractors, and/or volunteer personnel from liability in the performance of the graffiti abatement by completing a permission and waiver form.
- (d) If the city informs the property owner of the removal free of charge in accordance with subsection (c) and the United States Postal Service returns the notice as "refused" or "unclaimed," or the property owner fails to respond to the city's request for written permission to remove the graffiti within ten (10) days of the date such request is mailed, the property owner will be deemed to have refused the offer.

**Sec. 62-130. Notice to abate graffiti.**

- (a) If the property owner refuses the offer of removal free of charge, the director shall serve written notice to abate the graffiti from the property within fifteen (15) days after the date the notice is received.
- (b) Notice under this article shall be given:
  - (1) Personally in writing;
  - (2) By letter sent by certified mail, addressed to the property owner at the property owner's address as contained in the records of the Bexar County Appraisal District; or
  - (3) If service cannot be obtained under subsections (1) or (2):
    - a. By publication at least once in a newspaper of general circulation;
    - b. By posting the notice on or near the front door of each building on the property to which the notice relates; or
    - c. By posting the notice on a placard attached to a stake driven into the ground on the property to which the notice relates.
- (c) If the director mails a notice to a property owner in accordance with this section and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.
- (d) Notice under this article shall contain:
  - (1) An identification, which is not required to be a legal description, of the property;
  - (2) A description of the location of the graffiti on the property;
  - (3) The time period in which the owner must abate the nuisance;
  - (4) A statement that the owner must abate the graffiti nuisance within such time period;
  - (5) A statement that the owner may request a hearing within fifteen (15) days;
  - (6) A statement that should the owner fail to abate the situation within the stated time period, the city may cause the correction and abatement work to be done on it's own and shall charge the owner for the expenses involved, and upon failure of the owner to pay the city for such expense, fix a lien on the lot or parcel for the expense involved;
  - (7) A statement that if the owner demonstrates a hardship as defined in section 21-288, the director shall cause the graffiti to be abated without cost to the owner, and no lien shall be placed on the property.

(e) Notice under this article shall be deemed to have been received:

- (1) For personal service, as of the date the notice was given personally to the owner;
- (2) For mailed notice, the date the notice is received; or
- (3) For notice by posting, fifteen (15) days after notice was posted on the property or structure.

#### **Sec. 62-131. Hearing.**

The owner of a lot or parcel subject to abatement under this article may request a hearing by notifying the director within fifteen (15) days following the date the city serves the required notice. The hearing shall be conducted by a hearing official designated by the city manager for the purpose of determining whether the conditions constitute a public nuisance under the provisions of this article. Unless notice is waived by the owner, the owner shall be provided written notice of the time and place of the hearing at least ten (10) days prior thereto. At the hearing, the owner and the director may present any evidence relevant to the proceedings. If the hearing official finds that conditions constituting a nuisance hereunder exist, the hearing official shall issue an order so stating.

#### **Sec. 62-132. Paint provided.**

An owner who demonstrates to the director that his structure has been subjected to graffiti may be provided sufficient paint materials, if available, to cover the graffiti on the structure on the property. The materials will typically be from donated sources or bulk purchases and the paint may not match the existing background surface color. The owner shall have ten (10) business days following receipt of the paint materials to abate the graffiti.

#### **Sec. 62-133. Hardships.**

- (a) Each notice given under section 21-285 shall advise of the availability of the relief under this section. Applications for relief under this section shall be submitted to the director in such form and with such proofs of ownership, repeat occurrences and related factors as may be required to determine whether the applicant is entitled to assistance within ten (10) days following the date the city mails, posts or delivers the notices under section 21-285.
- (b) The director may cause the graffiti to be abated without cost to the owner if an owner demonstrates that the property for which notice of graffiti has been issued has been the subject of at least two (2) prior graffiti incidents (evidenced by either notices provided pursuant to this article or bona fide police reports) during the preceding one hundred eighty (180) days, that the owner complied with the requirements of this article by abating the prior graffiti within ten (10) business days of the date of the applicable notice or police report and that the city has abated the property no more than twice in a calendar year.



**Sec. 62-134. Abatement by city; payment of costs by owner; imposition of lien.**

- (a) If an owner fails to abate a graffiti nuisance during the time allowed for abatement and/or fails to respond to the notice of the nuisance, the director may order abatement of the nuisance to be done at the owner's expense. This remedy shall be in addition to any other remedy available to the city.
- (b) Persons authorized by the director to abate the nuisance may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.
- (c) Whenever the city shall abate a graffiti nuisance as provided by this article, the director shall have the option of selecting a private contractor to abate the nuisance.
- (d) The city shall assess to the owner a charge for all work done to abate the graffiti nuisance, including an administrative expense of one hundred eighty dollars (\$180.00), and cause the expense thereof to be assessed on the property upon which such expense is incurred. All revenue collected shall be deposited in a separate account in the city dedicated to graffiti abatement.
- (e) A statement of the costs incurred by the city to abate the nuisance shall be mailed to the owner, if the owner and mailing address is known, and, if not known, may be published in a newspaper of general circulation in the city. The statement shall demand payment within thirty (30) days from the date of receipt or publication.
- (f) If such statement has not been paid within such period, the city manager or other official designated by the city manager may file a statement of expenses incurred with the county clerk stating the owner's name, if known, and the legal description of the lot or parcel. The statement of expenses or a certified copy of the statement shall be prima facie proof of the expenses incurred. Such statement shall be and the city shall have a privileged lien for expenditures made and interest accruing at the rate of ten (10) percent on the amount due from the date incurred by the city. Such liens shall be inferior only to tax liens and liens for street improvements. The city may foreclose such liens in a proceeding brought in accordance with applicable law. The remedy allowed in this subsection shall not be the city's sole remedy.

**Sec. 62-135. - Penalty.**

- 1. Any person violating a provision of this division shall be guilty of a class C misdemeanor.
- 2. An offense under this division shall be punishable:
  - 1. By a fine of not less than \$1, and not more than \$100 for the first offense;
  - 2. By a fine of not less than \$1, and not more than \$250 for the second offense; and
  - 3. By a fine of not less than \$1, and not more than \$500 for all subsequent offenses.

**Sec. 62-136. - Defenses.**

It is an affirmative defense to prosecution of this offense that the property owner:

- 1. Has removed graffiti from that particular property three or more times within the preceding 12 months; and
- 2. Has taken reasonable efforts to prevent the application of graffiti on that property