

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTERS 10 AND 15 OF THE MESQUITE CITY CODE, AS AMENDED, BY RENUMBERING SECTION 10-202 TO SECTION 10-203, AND ADDING A NEW SECTION 10-202, BY DELETING SUBSECTION 15-194(i) IN ITS ENTIRETY AND ADDING A NEW SUBSECTION 15-194(i); PROVIDING PROCEDURES ADDRESSING REMOVAL OF GRAFFITI IN ACCORDANCE WITH STATE LAW; PROVIDING THAT USERS OF CITY RIGHT-OF-WAY UNDER CHAPTER 15 OF THE MESQUITE CITY CODE REMOVE GRAFFITI IN COMPLIANCE WITH SECTION 10-202; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$500.00 FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Mesquite, Texas (the “**City Council**”), finds that problems with unlawful graffiti in the City of Mesquite (the “**City**”) persists despite local and state laws establishing offenses for creating and maintaining graffiti; and

WHEREAS, unlawful graffiti lowers property values and fosters criminal activity; and

WHEREAS, it is the duty of a property owner to maintain his or her property; and

WHEREAS, the City Council desires to provide a process for the required removal of graffiti in compliance with Section 250.006 of the Texas Local Government Code; and

WHEREAS, the City Council finds it necessary to make it the duty of property owners and authorized users of City right-of-way to remove graffiti in accordance with state law.

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

SECTION 1. That Chapter 10 of the Mesquite City Code, Texas, as amended, is hereby amended by renumbering Section 10-202 to Section 10-203, and adding a new Section 10-202 to read as follows, in all other respects said Code and Chapter to remain in full force and effect.

ARTICLE IX. OFFENSES AGAINST PROPERTY

Sec. 10-202. Duty of property owner to remove graffiti.

(a) In this section:

- (1) *Director* means the director of the department designated by the City Manager to enforce and administer this section or the director’s authorized representative.

- (2) *Graffiti* means any marking, including but not limited to, any inscription, slogan, drawing, painting, symbol, logo, name, character or figure that is made in any manner on tangible property.
 - (3) *Owner* means any person with the legal right of possession to tangible property.
- (b) An owner of any tangible property in the City commits an offense if he fails to remove all graffiti from the property that is visible from any public property or right-of-way or from any private property other than the property on which the graffiti exists, unless:
 - (1) The graffiti is located on transportation infrastructure; or
 - (2) The removal of the graffiti would create a hazard for the person performing the removal.
- (c) Before issuing a citation for a violation under Subsection (b) of this section, the director shall serve the property owner with written notice to remove the graffiti from the property within 15 calendar days after the date the notice is served. The notice may be served by handing it to the owner in person or by United States certified mail, five-day return receipt requested, addressed to the owner at the owner's post office address as shown in the records of the appraisal district in which the property is located. If the owner cannot be found and the notice is returned by the United States Postal Service, then the owner may be notified by:
 - (1) Publication at least once in a newspaper of general circulation in the County or City;
 - (2) Posting the notice on or near the front door of each building on the property to which the violation relates; or
 - (3) Posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- (d) The 15 calendar days will be counted:
 - (1) From the date the notice is personally served on the owner or from the sixth day after the notice is placed in the United States certified mail; or
 - (2) If the owner cannot be found or the notice is returned by the United States Postal Service, from the date the notice is:
 - a. Published in accordance with Subsection (c)(1) of this section; or
 - b. Posted in accordance with Subsection (c)(2) or (c)(3) of this section.

- (e) Before the director may issue a notice to remove graffiti under Subsection (c), all of the following must occur:
 - (1) The City must offer to remove the graffiti from the owner's property at no charge to the property owner. The offer must be in writing and must include a date by which the property owner must accept or refuse the offer.
 - (2) The property owner must refuse the City's offer to remove the graffiti free of charge. The refusal must be provided to the director in writing. Failure to accept or refuse the City's offer by the date set forth in the offer is deemed to be consent for the City to remove the graffiti from the property free of charge.
- (f) If the director serves notice to a property owner under Subsection (c) and the property owner fails to remove the graffiti within the time required by Subsection (c), then the City may remove the graffiti and charge the expenses of removal to the property owner in accordance with state law. The City's expenses to remove the graffiti will be collected from the owner, or levied, assessed and collected against the property on which the work is performed. To obtain a lien against the property, the director, on behalf of the City Council, shall file a statement of expenses with the county clerk of the county in which the property is located setting out the actual expenses incurred by the City, the name of the property owner, if known, and a legal description of the property. The City's lien attaches when the statement of expenses is filed in the real property records of the county in which the property is located. The City's lien is subordinate to any previously recorded lien and to the rights of a purchaser or lender for value who acquires an interest in the property before the statement of expenses is filed.
- (g) It is a defense to prosecution under Subsection (b) of this section that:
 - (1) The City did not offer to remove the graffiti at no charge to the property owner in compliance with Subsection (e)(1);
 - (2) The property owner did not refuse the City's offer to remove the graffiti free of charge in compliance with Subsection (e)(2);
 - (3) No notice was served on the property owner in compliance with Subsection (3);
 - (4) The property owner has removed graffiti from that particular property three or more times within the preceding 12 months; or
 - (5) The graffiti was created on the property with the owner's consent and does not violate the sign regulations of the Mesquite Zoning Ordinance or any other applicable City ordinance or state or federal law.

SECTION 2. That Chapter 15 of the Mesquite City Code, Texas, as amended, is hereby amended by deleting Subsection 15-194(i) in its entirety and adding a new Subsection 15-

194(i) to read as follows, in all other respects said Code, Chapter and Section to remain in full force and effect.

- (i) *Graffiti abatement.* User shall remove graffiti from its facilities in the right-of-way in compliance with Mesquite City Code Chapter 10, Section 10-202. The foregoing shall not relieve user from complying with any visual blight ordinance or regulation.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 5. That any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed \$500.00 for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

SECTION 6. That this ordinance shall take effect and be in force from and after five days after publication.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 16th day of December 2019.

Bruce Archer
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney