

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of an ordinance regulating)
graffiti nuisance property within that)
portion of the Salem-Keizer Urban Growth)
Boundary under Marion County)
jurisdiction and declaring an emergency.)

ORDINANCE NO. 1192

The Marion County Board of Commissioners ordains as follows:

Section 1. Title.

This ordinance shall be known as the Marion County Graffiti Abatement Ordinance and may be so cited and pleaded.

Section 2. Definitions.

- (1) "Days" means calendar days unless specified otherwise.
- (2) "Graffiti" means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted, or otherwise applied to property without the prior authorization of the owner of the property, regardless of the graffiti content, or nature of the material used in the commission of the act, or the material of the property.
- (3) "Graffiti nuisance property" means property to which graffiti has been applied, if the graffiti is visible from any public right of way, from any other public or private property or from any premises open to the public, and if the graffiti has remained for at least five (5) days.
- (4) "Owner" means any legal owner or any person having charge, care or control of property or premises.
- (5) "Person" means the United States or agencies thereof, any state, public or private corporation, local governmental unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.
- (6) "Property" means any real or personal property and that which is affixed, incident or appurtenant to real property, including but not limited to any premise, house, building, fence, structure or any separate part thereof, whether permanent or not.

Section 3. Policy.

The Board finds that graffiti causes property damage and creates visual blight. Graffiti constitutes a nuisance and creates an environment that invites criminal activity. The Board seeks to prevent graffiti and assure its prompt removal. This ordinance shall be liberally construed to achieve this purpose. This ordinance establishes standards, enforcement authority and proce-

dures whereby graffiti nuisances may be abated. This ordinance allows for the creation of a lien pursuant to ORS 30.460 if the county is required to abate a nuisance and the property owner does not pay the cost of abatement in a timely manner.

Section 4. Prohibitions.

No owner shall cause or permit the owner's property to be graffiti nuisance property within the unincorporated areas of the Salem/Keizer Urban Growth Boundary.

Section 5. Enforcement Responsibility and Authority.

This ordinance shall be enforced by a Marion County Enforcement Officer. Enforcement shall be accomplished through procedures outlined herein and through the Marion County Enforcement Ordinance.

Section 6. Graffiti Nuisance Inspection.

- (1) Upon receipt of a complaint, or observation of suspected graffiti, the enforcement officer shall conduct an inspection to determine whether a nuisance exists.
- (2) The enforcement officer or authorized representative shall conduct such inspections as deemed necessary to insure compliance with all provisions of this ordinance and shall have right of entry at any reasonable hour to investigate complaints and to insure abatement of nuisances. The enforcement officer shall obtain the consent of the owner or a court warrant before entering private property.

Section 7. Notice of Abatement.

- (1) In addition to any violation proceeding or other civil proceeding intended to enforce this ordinance, the enforcement officer may pursue the abatement procedures outlined below.
- (2) Upon finding that a violation of this ordinance exists on property, the enforcement officer shall provide prompt written notice to the owner of the property that informs the owner of the nuisance conditions. In that notice, the enforcement officer shall also demand that the nuisance be abated within five (5) days from the date of the written notice, or such lesser time as necessary to protect the public health, safety and welfare. The notice shall describe the property, the nature of the nuisance, and the action necessary to abate the nuisance.
- (3) The notice shall inform the property owner of the rights spelled out in Sections 8 and 9 of this ordinance, including the right to a hearing, and shall identify personnel that the property owner may contact for additional information.
- (4) The notice shall also explain the effects of an owner's failure to comply with the notice of abatement. These effects include potential citation and, if the county is required to abate the nuisance, the imposition of expenses, administrative costs and filing of a lien if these costs and expenses remain unpaid.
- (5) The notice of abatement shall be served on the owner by a method that is consistent with ORCP 7(D) and a copy posted at the property where the graffiti nuisance exists.

Section 8. Hearing Request.

An owner who receives a notice of abatement pursuant to this ordinance may request a hearing before the Marion County Hearings Officer. Hearing requests must be filed in writing with the Marion County Hearings Officer within five days of the date the notice of abatement was served.

Section 9. Hearing on Notice of Abatement.

- (1) Upon receiving a written request for a hearing, the Hearings Officer shall set a time and place for a hearing that shall be no more than seven days after the date of filing of the hearing request, or as soon as practicable. The hearings officer shall notify the person requesting a hearing of the time and date of the hearing. The enforcement officer shall appear and present evidence pertinent to the alleged nuisance and its abatement. The owner of the property may also present evidence before the Hearings Officer pertinent to the alleged nuisance and its abatement. The county shall have the burden of proving by a preponderance of the evidence that a nuisance exists and must be abated. Failure of the person requesting the hearing to appear shall constitute a waiver of the right to present evidence at the hearing or thereafter.
- (2) After the hearing, the Hearings Officer shall issue an order containing findings as to whether the alleged nuisance does in fact exist, the extent to which the nuisance exists and shall set a date for abatement to be accomplished by the owner. The Hearings Officers order shall be issued within seven (7) days of the date of the hearing or as soon as practicable.
- (3) The decision of the Hearings Officer is final. Appeal shall only be by writ of review under ORS chapter 34.

Section 10. Abatement.

- (1) If the nuisance has not been abated by the owner within the time allowed by this ordinance, the enforcement officer may cause the nuisance to be abated. The enforcement officer or persons authorized by the enforcement officer may enter upon property to abate the nuisance only upon obtaining consent of the owner or a court issued warrant.
- (2) Accurate records of the direct expense incurred by the county to abate the nuisance shall be kept and shall include therein a surcharge of twenty-five percent (25%) of the cost of the abatement for administrative overhead.
- (3) At the conclusion of the abatement, a notice of cost of abatement shall be sent by first class mail to the owner for full payment. If the owner did not request or appear at a hearing on the notice of abatement, then the notice of cost of abatement shall be served on the owner by a method that is consistent with ORCP 7(D). Payment must be made within 30 days from the date of the notice of cost of abatement. The notice must contain the following:
 - (a) the total cost of abatement including administrative overhead;

- (b) a statement that the cost and administrative overhead may be filed as a lien with the county clerk unless paid within 60 days from the date of the notice; and
 - (c) a statement that the owner may contest the charges at a hearing that will be scheduled on the matter.
- (4) A copy of the notice of cost of abatement shall also be sent to the Hearings Officer. The Hearings Officer shall set a time and place for a hearing on the cost of abatement and shall notify the owner and enforcement officer of the time and place of the hearing. The only issue at the hearing shall be the reasonableness of the cost of abatement. Failure of the person requesting hearing to appear shall constitute a waiver of the right to present evidence at the hearing or thereafter. At the conclusion of the hearing, the Hearings Officer shall issue an order detailing the amount of the cost of abatement that the owner must pay, if any. The Hearings Officer's order shall also indicate that the cost of abatement must be paid within 30 days and if it is not paid within 60 days, the county may record a lien with the County Clerk Lien Record. The Hearings Officer's order of determination shall be final and binding. Appeal shall only be by writ of review under ORS chapter 34.

Section 11. Lien Record Filing.

If costs are not paid within 60 days of the Hearings Officer's order requiring payment of cost of abatement, the enforcement officer shall record a lien with the Marion County Clerk or any other county clerk of this state. The total amount of cost of abatement shall be recorded as a lien in the County Clerk Lien Record. The lien provided for herein shall be foreclosed in the manner prescribed by state law for the enforcement of liens. Nothing in this section precludes the county from taking other action to collect the cost of abatement.

Section 12. Waiver of Costs.

The cost and expense of abatement may be waived for low income, elderly or disabled persons who make a waiver request within ten days of the date of the notice of cost of abatement. The Public Works Director shall establish standards for waiver of costs and expenses in these circumstances.

Section 13. Penalties.

- (1) Except as set forth in subsections (2) and (3) below, any person who violates Section 4 of this ordinance shall, upon conviction, be punished by a fine of not more than the amount provided by state law for a Class B violation.
- (2) Any person that violates Section 4 of this ordinance for a second time within one year of a prior violation shall, upon conviction, be punished by a fine of not more than the amount provided by state law for a Class A violation.
- (3) Any person that fails to abate a graffiti nuisance within the time provided in a hearings officer's order shall, upon conviction, be punished by a fine of not more than the amount provided by state law for a Class A violation.
- (4) Each day that this ordinance is violated shall constitute a separate violation.

Section 14. Other Remedies.

The provisions of this ordinance are in addition to and not in lieu of any other procedures and remedies provided by law including equitable relief and damages.

Section 15. Severability Clause.

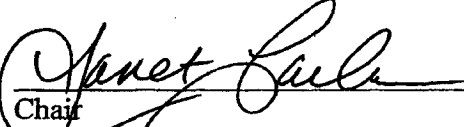
Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance be declared invalid, such declaration shall not affect the validity of any other section, subsection, paragraph, sentence, clause or phrase; and if this ordinance or any portion thereof should be held to be invalid on one ground but valid on another, it shall be construed that the valid ground is the one upon which the ordinance or such portion thereof was enacted.

Section 16. Emergency Clause.

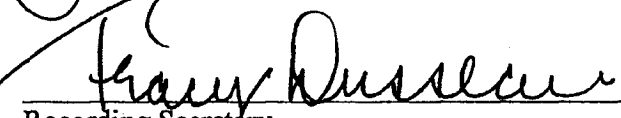
This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect upon its passage.

SIGNED AND FINALIZED this 30 day of June 2004.

MARION COUNTY BOARD OF COMMISSIONERS



Chair



Recording Secretary

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