

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2144

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON
ADOPTING REGULATIONS RELATING TO ABATEMENT AND
REMOVAL OF GRAFFITI**

WHEREAS, the Snohomish City Council finds that there has been a significant increase in the number of incidents involving graffiti and the associated defacing and vandalism to public and private property; and

WHEREAS, certain types of graffiti identified in and around Snohomish and Snohomish County are associated with the presence of gang activity; and

WHEREAS, staff and City Council have consulted with school district representatives, business community representatives, and citizens in order to make recommendations to address graffiti and gang related activity in and around the City; and

WHEREAS, the City Council wishes to request the Snohomish business community, on a voluntary basis, restrict access to aerosol paint and indelible markers to minors under the age of 18 years;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SNOHOMISH,
WASHINGTON DO ORDAIN AS FOLLOWS:**

Section 1. A new Chapter 9.96 of the Snohomish Municipal Code is hereby enacted reading as follows:

Chapter 9.96

GRAFFITI NUISANCE

Sections:

- 9.96.010 Graffiti Deemed Nuisance.
- 9.96.020 Definitions.
- 9.96.030 Continued Presence of Graffiti an Infraction.
- 9.96.040 Graffiti – Notice of Removal.
- 9.96.050 Appeal.
- 9.96.060 Removal by City.
- 9.96.070 City Cost Recoverable – Debt – Lien.
- 9.96.075 Sale or Gift of Aerosol Paint and Indelible Markers.
- 9.96.080 Severability.

9.96.010 Graffiti Deemed Nuisance. Graffiti and other defacement of public and private property including walls, rocks, bridges, fences, gates and other structures, trees, and other real

and personal property within the City constitutes a nuisance. Although it is appropriate, where possible, to request that the courts require people who are convicted of acts of malicious mischief and vandalism involving the application of graffiti to public or private property to restore the property so defaced, damaged, or destroyed, oftentimes it is difficult to identify, or to identify and convict, the wrongdoer. The continued presence of graffiti is a blight on the community. While voluntary graffiti removal should be encouraged, where graffiti has not been promptly removed, graffiti should be removed in accordance with the provisions of this chapter.

9.96.020 Definitions. For the purposes of this chapter, the following words shall have the following meanings:

“Abate” means the removal, painting over, or other obscuring of graffiti from view as directed by the notice provided for in SMC 9.96.040.

“Graffiti” means the defacing, damaging, or destroying by spraying of paint or marking of ink, chalk, dye, or other similar substances on public or private buildings, structures, facilities, natural features, and places.

“Graffiti nuisance property” means property upon which graffiti exists and where, after notice as provided by this chapter, the graffiti has not been abated by the deadline set in a notice as established by this chapter.

"Indelible marker" shall mean any marker, pen, or similar implement containing anything other than a solution which can be removed with water after it dries and having a flat, pointed, or angled writing surface of a width of 4 mm or greater.

“Owner” means any entity or entities having a legal or equitable interest in real or personal property including but not limited to the interest of a tenant or lessee.

"Pressurized container" shall mean any can, bottle, spray device, or other mechanism designed to propel liquid which contains ink, paint, dye, or other similar substance which is expelled under pressure either through the use of aerosol devices, pumps, or similar propulsion devices.

“Responsible party” means an owner, and also an entity or person acting as an agent for an owner, or an entity or a person who has dominion and control over a property. There may be more than one responsible party for a particular property.

9.96.030 Continued Presence of Graffiti an Infraction. It shall be a civil infraction for a responsible party to allow a graffiti nuisance property to exist. Each day a graffiti nuisance property shall exist shall be a separate infraction. A civil infraction under this chapter shall be punishable by a penalty of \$25.00 for each violation.

9.96.040 Graffiti – Notice of removal.

- A. Whenever graffiti exists and is visible to any person of normal eyesight utilizing any public road, parkway, alley, sidewalk, or other facility open to the general public, the

responsible person shall abate such graffiti nuisance within 48 hours of the placement of such graffiti.

- B. Whenever the responsible party fails to abate and remove graffiti as set forth in (A) above, and whenever the City Manager or his/her designated representative determines that graffiti exists, a notice shall be issued to the responsible person to abate the nuisance by a stated deadline which shall be no more than 48 hours after the date of the notice unless weather or seasonal conditions require a longer deadline.
- C. The giving of notice as required by this section shall be accomplished by providing the notice to the responsible party in any one of the following ways:
 - 1. By personal service on the responsible party;
 - 2. By registered or certified mail, postage prepaid, properly addressed and mailed to the last known address of the responsible party and to the address of the party.
- D. The notice shall be as established by the Chief of Police. The notice shall include a list of community resources and references where the property owner may seek assistance in the eradication of graffiti.

9.96.050 Appeal. The hearing examiner for the City of Snohomish hereby is given jurisdiction to hear appeals of a “Notice of Graffiti, of Graffiti Nuisance Property and Removal.”

An appeal shall be commenced by filing a notice of appeal with the City Clerk within 10 days after the service of the “Notice of Graffiti, of Graffiti Nuisance Property and Removal” on the party or parties to whom the notice is directed. If no appeal is filed within said 10 days, the “Notice of Graffiti, of Graffiti Nuisance Property and Removal” shall become final and conclusive, and not subject to appeal or review in any forum.

In any appeal, the City shall have the burden to prove by a preponderance of the evidence that the property contains graffiti, the named party is a responsible party, the deadline for abatement is reasonable and should not be adjusted for weather or seasonal conditions, and the manner of abatement is reasonable.

If the hearing examiner finds that the property contains graffiti and that the named party is a responsible party, but that either the manner of abatement is not reasonable, or the deadline should be extended for seasonal or weather conditions, then the hearing examiner shall modify the manner of abatement to make the same reasonable or extend the deadline a reasonable period to account for seasonal or weather conditions, as the case may be.

The hearing examiner shall issue a written decision containing the following information:

- A. Findings of fact (which shall include the common address and legal description for the property) and conclusions of law;

- B. The manner of any required abatement action and the deadline by which abatement must be completed;
- C. A description of the civil penalty for an infraction which may accrue if the responsible party fails to abate the graffiti by the deadline established in the decision and order;
- D. A statement that the decision of the hearing examiner becomes final 21 days after the date of the decision unless the decision of the hearing examiner is appealed to the Snohomish County Superior Court; and
- E. A statement that if the graffiti is not abated by the deadline established in the decision and order that the City or its contractor may abate the graffiti and the cost of abatement will be a personal obligation of the responsible party and a lien against the graffiti nuisance property.
 - 1. The hearing examiner shall mail his/her decision to the named party by regular and certified mail, and a copy of the decision also shall be posted on the property in a conspicuous location.
 - 2. Any review of the decision of the hearing examiner must be by land use petition filed within 21 days of issuance of the decision and order in the Snohomish County Superior Court in accordance with the Land Use Petition Act.

9.96.060 Removal by City. When the deadline established under this chapter has passed, and the property is deemed graffiti nuisance property, the City may abate the graffiti nuisance property. Either City resources or contractors may be used in abating the graffiti nuisance property. Using any lawful means, the City and its representatives may enter upon the graffiti nuisance property and abate the graffiti. The City may seek such judicial process or writ as is deemed necessary to carry out the abatement.

9.96.070 City Cost Recoverable – Debt – Lien. If the City is required to remove graffiti and abate a graffiti nuisance property, the City shall bill the cost of removal and abatement to the responsible party. The costs billed shall be due and payable to the City within 10 calendar days of billing. The costs billed shall include the value of the use of City staff and resources at the current established hourly rate and all payments made to third parties.

If the costs billed are not paid when due, they shall be a personal debt of the responsible party and automatically the costs shall be a lien upon the graffiti nuisance property. The City may take all lawful action to collect the debt of the responsible party or to foreclose its lien upon the graffiti nuisance property.

9.96.075 Sale or Gift of Aerosol Paint and Indelible Markers. On a voluntary basis, the Snohomish City Council requests and encourages all businesses within the City and all citizens to refrain from selling, offering to sell, cause to be sold, giving, or lending any aerosol paint or pressurized container of paint or any indelible marker to any minor under the age of 18 years. Businesses are encouraged to require picture identification for all persons who may be under the

age of 18 years. All businesses who offer for sale aerosol paint or indelible markers are requested to voluntarily restrict access to those items from the public by either placing them behind a locked counter, cabinet, or other storage facility so that access to them cannot be gained without their being unlocked by an authorized employee or other authorized representative of such business or by placing them in a location where they can be in constant, uninterrupted view of an authorized employee or other authorized representative of such business. Within one year of the effective date of this ordinance, the City Council shall review the effectiveness of this section and shall consider whether such provisions shall be made mandatory rather than voluntary.

9.96.077 Rewards. The City may offer a reward not to exceed \$300.00 for information leading to the identification and apprehension of any person who willfully damages or destroys any public or private property by the use of graffiti. The actual amount awarded (not to exceed \$300.00) shall be determined in the discretion of the Chief of Police. In the event of damage to public property, the offender or the parents or legal guardian of any unemancipated minor must reimburse the City for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate. Claims for rewards under this section shall be filed with the Chief of Police or his designee in the manner specified by the Snohomish Police Department. No claim for a reward shall be allowed unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.

9.96.080 Severability. The provisions of this chapter are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection or portion of this chapter, or the application thereof to any person or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

Section 2. This ordinance shall become effective on May 15, 2008.

ADOPTED by the City Council and **APPROVED** by the Mayor this 6th day of May, 2008.

CITY OF SNOHOMISH

By _____
Lynn Schilaty, Mayor Pro-tem

Attest:

Approved as to form:

By _____
Torchie Corey, City Clerk

By _____
Grant K. Weed, City Attorney