

ORDINANCE NO. 3810

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MESQUITE BY ADDING A NEW ARTICLE VIII AND A NEW SECTION 10-201; THEREBY PROVIDING PENALTIES FOR POSSESSING A GRAFFITI IMPLEMENT WHILE ON CERTAIN PUBLIC OR PRIVATE PROPERTY WHEN IT IS CLOSED TO THE PUBLIC OR WHILE WITHIN 10 FEET OF CERTAIN INFRASTRUCTURES; MAKING A PARENT OR GUARDIAN OF A MINOR CRIMINALLY RESPONSIBLE FOR THE MINOR'S VIOLATION OF THIS ORDINANCE; PROVIDING PRESUMPTIONS AND DEFENSES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council of the City of Mesquite, Texas (City Council), finds that graffiti continues to exist on public and private property within the City of Mesquite (City) despite local and state laws establishing offenses for creating and maintaining graffiti, which graffiti lowers property values and fosters criminal activity; and

WHEREAS, the City Council finds that, in order to further prevent and reduce graffiti on public and private property in the City, it is necessary to regulate the implements commonly used to deface and destroy property with graffiti.

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

SECTION 1. That Chapter 10 of the Code of the City of Mesquite is hereby amended by adding a new Article VIII and a new Section 10-201 to read as follows, in all other respects said Code and Chapter to remain in full force and effect.

**ARTICLE VIII. OFFENSES AGAINST PROPERTY.**

**Sec. 10-201. Possession of graffiti implements prohibited; presumptions; defenses.**

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:
- (1) *Aerosol paint container* means any container that is adapted or made for the purpose of applying aerosolized paint or any other aerosolized substance capable of defacing property.

- (2) *Building* means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament or use.
- (3) *Consent* means assent in fact, whether express or apparent, by a person legally authorized to act for an owner of property.
- (4) *Etching* or *engraving device* means a device that is capable of making a delineation or impression on tangible property, regardless of the manufacturer's intended use for that device.
- (5) *Felt tip marker* means any marker or similar implement that:
  - (i) Contains ink; and
  - (ii) Has a flat or angled writing surface that, at its broadest width, exceeds one-eighth inch.
- (6) *Graffiti* means any temporary or permanent 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 without the consent of the property owner.
- (7) *Graffiti implement* means any aerosol paint container, paint gun, paint ball gun, paint ball gun pellets or capsules, felt tip marker, paint stick, graffiti stick, brush, or etching or engraving device that is capable of scarring, marking or otherwise defacing stone, glass, metal, concrete, wood or any surface of tangible property.
- (8) *Guardian* means:
  - (i) A person who, under court order, has responsibility for the care and management of the person of a minor; or
  - (ii) A public or private agency with whom a minor has been placed by a court.
- (9) *Habitation* means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:
  - (i) Each separately secured or occupied portion of the structure or vehicle; and
  - (ii) Each structure appurtenant to or connected with the structure or vehicle.
- (10) *Minor* means any person under 17 years of age.

- (11) *Owner* means any person with the legal right of possession to tangible property.
  - (12) *Paint stick* or *graffiti stick* means any device containing a solid or liquid form of paint, chalk, wax, epoxy or other similar substance that leaves a visible mark upon application to a surface.
  - (13) *Parent* means a person who is the natural, adoptive parent or stepparent of a person.
  - (14) *Property* means:
    - (i) Real property;
    - (ii) Tangible or intangible personal property, including anything severed from land; or
    - (iii) A document, including money, that represents or embodies anything of value.
- (b) A person commits an offense if, with the intent to make graffiti, he possesses any graffiti implement:
- (1) In or on any part of a publicly-owned or privately-owned building, facility, park, school ground, library, playground, swimming pool, recreational facility, right-of-way or other property when that property or that part of the property is closed to the public; or
  - (2) Within 10 feet of any underpass, overpass, bridge abutment, storm drain or similar type of infrastructure.
- (c) A person is presumed to possess the graffiti implement with the intent to make graffiti on such property under Subsection (b)(1) or on such infrastructure under Subsection (b)(2) if while on the property or within 10 feet of the infrastructure, whichever applies, he possesses on or about his person at least:
- (1) One aerosol paint container; or
  - (2) Two graffiti implements other than an aerosol paint container.
- (d) A person commits an offense if he is the parent or guardian of a minor and knowingly permits or by insufficient control allows the minor to violate:
- (1) Subsection (b)(1); or
  - (2) Subsection (b)(2).

- (e) It is a defense to prosecution under Subsections (b)(1) and (d)(1) that the graffiti implement was possessed on the property with consent.
- (f) It is a defense to prosecution under Subsections (b)(2) and (d)(2) that the graffiti implement was:
  - (1) Possessed on the property with consent; or
  - (2) Possessed in a place where the implement was going to be used for a non-graffiti activity including, but not limited to, an employment, school, home, church, art or similar activity, or possessed while enroute to or from such a place and activity.
- (g) For purposes of applying the defenses set forth in Subsections (e) and (f)(1) of this section, consent is presumed to exist if the person possessing the graffiti implement is an employee or relative of the property owner.
- (h) Before taking any enforcement action under Subsections (b)(2) and (d)(2) 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 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 police officer shall not issue a citation or make an arrest under Subsections (b)(2) or (d)(2) of this section unless the police officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense described in Subsection (f) is present.

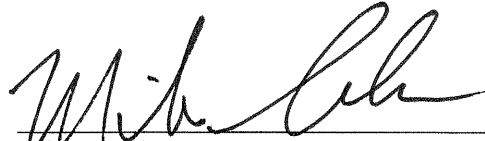
SECTION 2. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 3. 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 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punishable by a fine not to exceed Five Hundred (\$500.00) Dollars for each offense.

SECTION 5. That this ordinance shall take effect immediately from and after its passage.

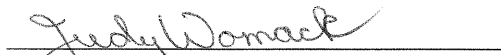
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas,  
on the 17th day of July, 2006.



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Mike Anderson  
Mayor

ATTEST:

APPROVED:



\_\_\_\_\_  
Judy Womack  
City Secretary



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B. J. Smith  
City Attorney