

ORDINANCE NO. 1166

**AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 9.44
RELATING TO GRAFFITI ABATEMENT; PROVIDING ADDITIONAL PROVISIONS
FOR NOTICE TO PROPERTY OWNERS; REQUIRING ABATEMENT OF GRAFFITI;
PROVIDING FOR REMEDIES; AND DECLARING AN EMERGENCY.**

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. CMC 9.44.010 is amended to read as follows by adding the following definitions:

- A. "Graffiti nuisance property" means property to which graffiti has been applied, if the graffiti is visible from any public right-of-way, any other public or private property, or from any premises open to the public, and if the graffiti has not been abated within the time required by this ordinance.
- B. "Owner" means the legal owner of property or a person in charge of property.
- C. "Person in charge of property" means an agent, occupant, lessee, contract purchaser or other person having possession or control of property or supervision of a construction project.
- D. "Property" means any real or personal property and that which affixed, incident or appurtenant to real property, including but not limited to any premises, house, building, fence, structure or any separate part thereof, whether permanent or not.

Section 2. CMC 9.44.060 is added to read as follows:

GRAFFITI NUISANCE PROPERTY:

- A. It is hereby found and declared that graffiti creates a visual blight and property damage. When graffiti is allowed to remain on property and not promptly removed, it invites additional graffiti, gang activity, criminal activity, and constitutes a nuisance.
- B. Any property within the city which becomes graffiti nuisance property is in violation of this ordinance.
- C. Any owner of property who permits said property to be a graffiti nuisance property is in violation of this ordinance.

Section 3. CMC 9.44.070 is added to read as follows:

NOTICE PROCEDURE:

- A. When the Chief of Police believes in good faith that property within the city is a potential graffiti nuisance property, the Chief of Police shall, notify the owner in writing that the property is a potential graffiti nuisance property. The notice shall contain the following information:
- (1) The street address or description sufficient for identification of the property.
 - (2) That the Chief of Police has found the property is a potential graffiti nuisance property with a concise description of the conditions leading to this finding.
 - (3) A direction to abate or remove the graffiti, or show good cause to the Chief of Police why the owner cannot abate or remove the graffiti, within ten (10) business days from service of the notice.
 - (4) That, if the graffiti is not abated or removed, or good cause for failure to abate or remove is not shown, the Municipal Judge may order abatement, with appropriate conditions. The Municipal Judge may also employ any other remedy deemed by it to be appropriate to abate the nuisance, including but not limited to authorizing a civil complaint to be filed in a court of competent jurisdiction.
 - (5) That permitting graffiti nuisance property is a violation punishable by a fine not to exceed \$500.00, pursuant to CMC 1.08.010. Violators may be cited into Canby Municipal Court when charged with this violation.
 - (6) That the above remedies are in addition to those otherwise provided by law.
- B. Service of the notice is completed by personal service or upon mailing the notice by first class mail, postage prepaid, addressed to the owner at the owner's last known address.
- C. A copy of the notice shall be served on occupants of the property, if different from the owner.
- D. The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under

this ordinance.

Section 4. CMC 9.44.080 is added to read as follows:

ABATEMENT PROCEDURES

- A. Within ten (10) business days of the personal service or mailing of the notice the owner shall abate or remove the graffiti or show good cause why the owner cannot abate or remove the graffiti within that time period.
- B. Upon good cause shown, the Chief of Police may grant an extension not to exceed ten (10) additional business days.
- C. If the owner does not comply with the provisions of this ordinance, the Chief of Police may refer the matter to the Municipal Judge for hearing in the Municipal Court. The Municipal Court Clerk shall give notice of the hearing date to the owner and occupants, if the occupants are different from the owner.
- D. At the time set for a hearing, the owner and occupants may appear and be heard by the Municipal Judge.
- E. The Municipal Judge shall determine whether the property is graffiti nuisance property and whether the owner has complied with this ordinance.
- F. The city has the burden of proving by a preponderance of the evidence that the property is graffiti nuisance property.
- G. The owner has the burden of proving by a preponderance of the evidence that there is good cause for failure to abate the nuisance within ten (10) business days of the personal service or mailing of the notice.

Section 5. CMC 9.44.090 is added to read as follows:

REMEDIES OF THE CITY

- A. In the event that the Municipal Judge determines that the property is graffiti nuisance property, the Judge may order that the nuisance be abated. This order may include conditions under which abatement is to occur.
- B. The Municipal Judge may also employ any other legal remedy deemed by it to be appropriate to abate the nuisance, including but not limited to authorizing the filing of a civil complaint in a court of competent jurisdiction.
- C. The remedies provided in this section are in addition to those otherwise provided

by law.

Section 6. CMC 9.44.100 is added to read as follows:

PENALTY.

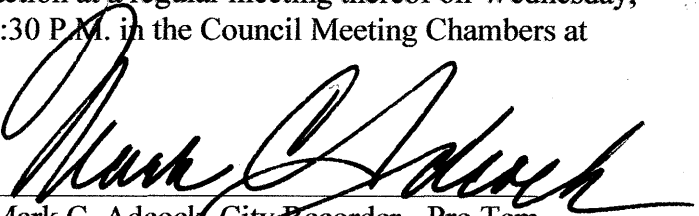
Permitting graffiti nuisance property is a violation punishable by a fine not to exceed \$500.00, pursuant to CMC 1.08.010. Violators may be cited into Canby Municipal Court when charged with this violation.

Section 7. CMC 9.44.110 is added to read as follows:

ABATEMENT BY THE CITY.

If the owner fails to abate the nuisance as ordered by the Municipal Judge, the city may cause the nuisance to be abated as provided in Canby Municipal Code Chapter 8.12.

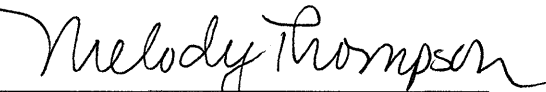
SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, December 15, 2004, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, January 5, 2005, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City hall in Canby, Oregon.


Mark C. Adcock, City Recorder - Pro Tem

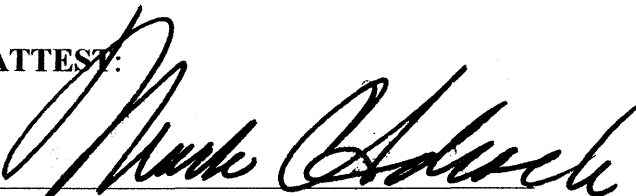
PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 5th day of January, 2005, by the following vote:

YEAS 5

NAYS 0


Melody Thompson, Mayor

ATTEST:


Mark C. Adcock, City Recorder - Pro Tem