

COTTONWOOD HEIGHTS

ORDINANCE NO. 200

AN ORDINANCE AMENDING CHAPTER 10.40 AND ADOPTING NEW CHAPTER 10.41 OF THE COTTONWOOD HEIGHTS CODE OF ORDINANCES REGARDING GRAFFITI AND PENALTIES

WHEREAS, effective 14 January 2005, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") adopted a code of ordinances (the "*Code*") for the City; and

WHEREAS, the Code includes chapter 10.40 ("*Chapter 10.40*") concerning property damage and trespass, which includes certain provisions concerning graffiti and related penalties; and

WHEREAS, the Council met in regular session on 12 February 2013 to consider, among other things, amending Chapter 10.40 to omit the graffiti-related provisions in that chapter and adopting new chapter 10.41 ("*Chapter 10.41*") of the Code to more completely address graffiti-related issues and penalties in the City; and

WHEREAS, the Council has reviewed proposed amended Chapter 10.40 and proposed new Chapter 10.41; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to so amend Chapter 10.40 and to adopt new Chapter 10.41 as proposed;

NOW, THEREFORE, BE IT ORDAINED by the city council of the city of Cottonwood Heights as follows:

Section 1. ***Amendment to Chapter 10.40 and Adoption of Chapter 10.41.*** The Council hereby amends Chapter 10.40, and adopts new Chapter 10.41, of the Code as shown on the attached exhibit, which shows deletions to the current Code ~~struck through~~ or otherwise shown as deletions, and additions to the current Code underlined or otherwise shown as additions.

Section 2. ***Action of Officers.*** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this ordinance (this "*Ordinance*"), whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 3. ***Severability.*** It is hereby declared that all parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 4. ***Repealer.*** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 5. ***Effective Date.*** This Ordinance, assigned no. 200, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's recorder, or such later date as may be required by Utah statute.

PASSED AND APPROVED this 12th day of February 2013.



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By *Kelwyn H. Cullimore, Jr.*
Kelwyn H. Cullimore, Jr., Mayor

VOTING:

| | | |
|--------------------------------|---|------------------------------|
| Kelvyn H. Cullimore, Jr. | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Michael L. Shelton | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| J. Scott Bracken ABSENT | Yea <input type="checkbox"/> | Nay <input type="checkbox"/> |
| Michael J. Peterson | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Tee W. Tyler | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |

DEPOSITED in the Recorder's office this 12th day of February 2013.

POSTED this 13 day of February 2013.

Chapter 10.40

PROPERTY DAMAGE AND TRESPASS

Sections:

10.40.010 Criminal damage to property.

~~**10.40.015 Graffiti removal required.**~~

10.40.020 Criminal trespass to vehicles.

10.40.030 Criminal trespass to land.

10.40.040 Trespass on city property.

10.40.050 Trespass from a public recreational trail.

10.40.060 Placing printed matter on vehicles.

10.40.010 Criminal damage to property.

A.—Whoever commits any of the following acts shall be deemed guilty of a class B misdemeanor:

A1. Knowingly damages any property without the owner's express permission;

B2. Recklessly, by means of fire or explosive, damages property of another;

C3. Knowingly starts a fire on the land of another without the express permission of the owner;

D4. Knowingly injures a domestic animal without the express permission of the owner; or

E5. Knowingly deposits on land or in any building, without the express permission of the owner, any stink bomb or any offensive-smelling compound, and thereby intends to interfere with the use of another of the land or building; ~~or~~

~~— 6. Knowingly writes on or defaces any property, by graffiti or other means, without the express permission of the owner.~~

~~— B. For purposes of this chapter, the term, "graffiti" means inscriptions, drawings, paintings or other visual defacing of buildings, structures, roadways or natural features, without the consent of the owner thereof, and which is not otherwise authorized and permitted pursuant to this chapter.~~

~~**10.40.015 Graffiti removal required.**~~

~~— A. Owners of property, structures, buildings or natural features upon which graffiti has been placed shall promptly remove such graffiti. If the owner of such property fails to remove such graffiti within five calendar days, the owner shall be given written notice in person or by certified mail to his last known address. The notice shall inform the property owner that there is graffiti on the property, that there is a requirement to remove the graffiti, and that if the graffiti is not removed within five days of the date of the notice, the graffiti may be removed by the city at the expense of the owner.~~

~~— B. The owner may object to the required graffiti cleanup by filing an appeal with the city manager or his designee within five days of the date of the notice. If the city manager or his designee finds that the property owner has reasonably responded to cleaning graffiti from the property on past occasions and has failed to clean the graffiti in the matter at hand primarily due to the cost of repeated cleaning, the property may be cleaned by the city at a reduced charge or no charge.~~

~~— After the time for appeal has expired and the property is cleaned by the city, if the owner~~

~~fails to make payment to the city treasurer within 20 days of the date of billing from the city, the city may cause suit to be brought in an appropriate court of law.~~

~~—In the event collection of expenses of removal are pursued through the court, the city shall sue for and receive judgment for all expenses of removal, together with reasonable attorney's fees, interest and court costs, and shall execute upon such judgment in the manner provided by law.~~

~~—C. The city may, at its discretion, seek paint, other cleanup supplies, and volunteer labor to provide graffiti cleanup services under this chapter. Persons convicted of crimes and sentenced to community volunteer services as a condition of probation shall, where available, be used for graffiti cleanup at no charge to property owners unless otherwise provided in this chapter.~~

10.40.020 Criminal trespass to vehicles.

Whoever knowingly and without authority enters any vehicle, aircraft or watercraft, or any part thereof of another, without his consent, shall be guilty of a class B misdemeanor.

10.40.030 Criminal trespass to land.

A. Whoever enters upon the land or any part thereof of another, after receiving immediately prior to such entry notice from the owner or occupant that such entry is forbidden, or remains upon the land of another after receiving notice from the owner or occupant to depart, shall be deemed guilty of a class B misdemeanor.

B. A person will be deemed to have received notice from the owner or occupant within the meaning of subsection A of this section if he has been notified personally, either orally or in writing, or if a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof.

10.40.040 Trespass on city property.

It is unlawful for any person, and such person shall be guilty of a class B misdemeanor for each day of violation hereof, to drive or operate any self-propelled motor vehicle in, on or about any property belonging to the city, or under the control of the city, except on public highways, streets and roads, unless such property is specifically designated and posted for such use.

10.40.050 Trespass from a public recreational trail.

It is unlawful for any person, and such person shall be guilty of a class B misdemeanor for each day of violation hereof, for the purpose of biking, hiking, or any other activity to willfully leave the boundaries of any public recreational trail across privately owned lands without the express consent of the landowner whenever notice against leaving the trail has been given by posting of a sign or signs reasonably likely to notify trail users.

10.40.060 Placing printed matter on vehicles.

A. It is unlawful for any person, and such person shall be guilty of a class B misdemeanor for each day of violation hereof, to distribute, deposit, place, throw, scatter or cast, or cause to be distributed, deposited, placed, thrown, scattered or cast, any handbill, circular, card, booklet, placard or other printed or written matter of any type, except notice of parking violations in or upon any automobile or other vehicle.

B. The provisions of this section shall not be deemed to prohibit the handing, transmitting or distributing of any noncommercial printed or written matter to the owner or other occupant of

any automobile or other vehicle who is willing to accept the same.

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Chapter 10.41

GRAFFITI PENALTIES

Sections:

10.41.010 Definitions.

10.41.020 Graffiti prohibited.

10.41.030 Graffiti implements—Prohibition against furnishing to minors.

10.41.040 Graffiti implements—Prohibition against possession by minors.

10.41.050 Graffiti implements—Intent.

10.41.060 Graffiti—Violation—Penalty.

10.41.070 Graffiti—Responsible adult civil liability.

10.41.080 Graffiti—City victim.

10.41.090 Graffiti removal required.

10.41.010 Definitions.

As used in this chapter, the following definitions shall apply:

A. "Graffiti" means any unauthorized inscription, insignia, symbol, word, figure, character or design that is marked, etched, scratched, drawn, sprayed or painted on a building, fence, wall, rock, bridge, gate, tree or landscaping, or other structure.

B. "Graffiti implement" means any fluid that does not remain soluble in water or any item that may be used to propel or apply said fluid.

C. "Minor" means a person under eighteen years of age.

D. "Responsible adult" means a parent or legal guardian of a minor.

10.41.020 Graffiti prohibited.

It is unlawful for any person to apply graffiti to any building, fence, wall, rock, bridge, gate, tree or landscaping, or other structure, either publicly or privately owned, without the permission of the owner or operator of such property.

10.41.030 Graffiti implements—Prohibition against furnishing to minors.

No person shall knowingly sell, exchange, give, loan, or in any way furnish a graffiti implement to any person if such person has the intent to use such graffiti implement to:

A. Place graffiti on public or private property, real or personal, of another;

B. Aid in the placement of such graffiti; or

C. Otherwise vandalize or deface such property.

10.41.040 Graffiti implements—Prohibition against possession with intent.

No person shall have a graffiti implement in his possession with the intent to:

A. Place graffiti on public or private property, real or personal, of another;

B. Aid in the placement of such graffiti; or

C. Otherwise vandalize or deface such property.

10.41.050 Graffiti implements—Intent.

Any person who, while in a public place, carries a graffiti implement with the intent to:

A. Place graffiti on public or private property, real or personal, of another;

B. Aid in the placement of such graffiti; or

C. Otherwise vandalize or deface such property, is guilty of a class B misdemeanor unless he has first received valid authorization from the governmental entity which has jurisdiction over the public area or other person who is designated to provide such authorization as to private property.

10.41.060 Graffiti—Violation—Penalty

A. Except as otherwise provided in this section, any person who is convicted of violating the provisions of this Chapter 10.41 shall be guilty of a class B misdemeanor.

B. A person who is convicted of violating Section 10.41.020 shall be subject to the following minimum fines and penalties:

1. For the first offense, the violator shall pay a fine of not less than \$400 but not more than \$1,000, plus perform one hundred hours of community service.

2. For the second offense, the violator shall pay a fine of not less than \$750 but not more than \$1,000, plus perform two hundred hours of community service.

3. For the third and each subsequent offense, the violator shall pay a fine of \$1,000, plus perform two hundred hours of community service.

C. The community service assigned pursuant to this section must, if possible, be related to the abatement of graffiti.

D. In addition to such punishment, the court may, in imposing sentence, order the defendant to restore the property which was defaced, damaged or destroyed.

E. The responsible adult(s) of a minor who violates section 10.41.020 is liable for all fines and penalties imposed against the minor to the extent permissible under UTAH CODE ANN. 78A-6-1113 or other applicable state statute.

F. If a person violates Section 10.41.020, the court may, in addition to any other penalty imposed, and unless prohibited by state or federal law, issue an order suspending the violator's driver's license for not more than two years. The court may require the violator to surrender all driver's licenses then held by the violator. The court shall, within five days after issuing the order, forward to the Department of Motor Vehicles any surrendered driver's licenses together with a copy of the suspension order.

G. A criminal penalty imposed pursuant to this section is in addition to any civil penalty or other remedy available pursuant to another ordinance or statute for the same conduct.

10.41.070 Graffiti—Responsible adult civil liability.

A. Any person who violates Section 10.41.020 is liable civilly to a property owner or other person who is damaged thereby.

B. Any act of a minor which results in the unlawful placement of graffiti on a building, fence, wall, rock, bridge, gate, tree or landscaping, or other structure, shall be imputed to that minor's responsible adult(s) for civil liability purposes to the extent permissible under UTAH CODE ANN. 78A-6-1113 or other applicable state statute.

C. This section in no way limits or narrows the liability of a responsible adult for acts of a minor pursuant to any other provision of law.

10.41.080 - Graffiti—City victim.

If graffiti is applied to any public property, or private property visible from any public street, road or alleyway, and such graffiti is removed, covered or cleaned up at city expense, the city then becomes the victim of the graffiti and suffers damage for the purpose of prosecution or a civil claim brought under this chapter.

10.41.090 Graffiti removal required.

A. Owners of property, structures, buildings or natural features upon which graffiti has been placed shall promptly remove such graffiti. If the owner of such property fails to remove such graffiti within six business days, then the city may give the owner written notice in person or by certified mail to his last known address. The notice shall inform the owner that there is graffiti on the property, that there is a requirement to remove or otherwise abate the graffiti, and that if the graffiti is not removed or abated within ten days after the date of the notice, the graffiti may be cleaned up by the city at the owner's expense.

B. The owner may object to the required graffiti cleanup by filing an appeal with the city manager or his designee within ten days after the date of the notice.

C. If the time for appeal expires and the owner has not cleaned up the graffiti, then the city may enter upon the property without further notice or legal process and remove or otherwise abate the graffiti.

D. The city's costs incurred in the graffiti cleanup shall be billed to the owner. If the owner fails to make full payment to the city treasurer within 90 days after the date of billing from the city, the city may cause suit to be brought in an appropriate court or may recover its costs as provided in UTAH CODE ANN. 10-11-3 to -4.

E. If suit by the city for recovery of its expenses of removal of graffiti is pursued, the city also shall be entitled to an award of its reasonable attorney's fees, interest and court costs.

F. The city's right to abate graffiti and to recover the cost of such cleanup under this chapter in no way limits or narrows the city's rights to inspect and clean property, and to recover its costs, under UTAH CODE ANN. 10-11-1 to -4, as amended.