

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1566

BY: LARASON

AS INTRODUCED

AN ACT RELATING TO CITIES AND TOWNS; AUTHORIZING MUNICIPAL GOVERNING BODIES TO REMOVE GRAFFITI FROM PRIVATE PROPERTY; PROVIDING PROCEDURES RELATING THERETO; REQUIRING MUNICIPALITY TO GIVE CERTAIN NOTICE; PROVIDING FOR HEARINGS PRIOR TO REMOVAL OF GRAFFITI; REQUIRING MUNICIPAL CLERK TO FILE CERTAIN LIEN; PROVIDING PROCEDURES FOR DETERMINING AND COLLECTING COSTS OF REMOVAL; REQUIRING MUNICIPAL CLERK TO FILE RELEASE OF LIEN; PROVIDING THAT CERTAIN COSTS CONSTITUTE LIEN AND PERSONAL OBLIGATION OF OWNER; PROVIDING FOR THE COLLECTION OF A FEE; PROVIDING RIGHT OF APPEAL; PROVIDING PROCEDURES FOR SUMMARY ABATEMENT OF GRAFFITI; DEFINING TERM; PROVIDING THAT REMEDIES ARE CUMULATIVE; PROVIDING THAT PROVISIONS OF ACT SHALL NOT APPLY TO AGRICULTURAL PROPERTY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-112.2 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. A municipal governing body may cause graffiti to be removed from property within the municipal limits in accordance with the procedures provided by this section.

B. A municipal governing body shall give at least ten (10) days' notice to the owner of the property that graffiti is to be removed from the property prior to any hearing held pursuant to subsection D of this section. Notice shall be given by posting a copy of the notice on the property to be affected and by mailing a copy of the notice to the property owner at the address shown by the current year's tax rolls in the office of the county treasurer. Written notice shall also be mailed to any mortgage holder as shown by the records in the office of the county clerk to the last-known address of the mortgagee. Upon mailing notice to any property owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which shall indicate the date of mailing and the name and address of the addressee. If neither the property owner nor the mortgage holder can be located, notice shall be given by posting a copy of the notice on the property or in the alternative, by publication as defined in Section 1-102 of Title 11 of the Oklahoma Statutes. If notice by publication is used, such notice shall be published once not less than ten (10) days prior to any hearing by the municipality pursuant to the provisions of this section. If a municipal governing body anticipates summary abatement of graffiti in accordance with the provisions of subsection H of this section, the notice shall state:

1. that any subsequent need for removal of graffiti within a one-year period after the initial removal pursuant to such notice may be summarily performed by the municipal governing body; and

2. that the costs of removal of the graffiti shall be assessed against the owner; and

3. that a lien may be imposed on the property to secure payment, all without further prior notice to the property owner or mortgage holder.

C. The owner of the property may give written consent to the municipality authorizing the removal of the graffiti. By giving written consent, the owner waives his right to a hearing by the municipality.

D. A hearing may be held by the municipal governing body to determine whether the graffiti has caused the property to become a detriment to the health, safety, or welfare of the public or a hazard to traffic. Upon a finding by the governing body that the graffiti constitutes a detriment or hazard, the agents of the municipality are granted the right of entry onto the property for the removal of the graffiti and to perform the necessary duties as a governmental function of the municipality. Immediately following the removal of the graffiti, the municipal clerk shall file a notice of lien with the county clerk describing the property and the work performed by the municipality which states that the municipality claims a lien on the property for the costs of removal. When filed, the notice of lien shall constitute constructive notice to all persons of the work performed and the lien claimed by the municipality.

E. The governing body shall determine the actual cost of the removal of the graffiti and any other necessary expenses incurred by the removal, including the cost of notice and mailing. The municipal clerk shall forward a statement by mail of the actual cost attributable to the removal of the graffiti and a written demand for payment for such costs to the property owner. In addition, a copy of the statement shall be mailed to any mortgage holder at the mortgage holder's address. Upon mailing the statement of costs to a

property owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the addressee. If a municipality removes any graffiti, the cost to the property owner shall not exceed the actual cost of the labor, maintenance, and equipment required for the removal of the graffiti. If removal of the graffiti is done on a private contract basis, the contract shall be awarded to the lowest and best bidder.

F. When payment is made to the municipality for costs incurred, the municipal clerk shall file a release of lien. If payment attributable to the actual cost of the removal of the graffiti is not made within thirty (30) days from the date of mailing the statement to the owner of the property, the municipal clerk shall forward a certified statement of the amount of the cost of removal to the county treasurer of the county in which the property is located. Said costs shall be levied on the property and collected by the county treasurer as are other taxes authorized by law. Until finally paid, the costs and the interest thereon shall be the personal obligation of the property owner from the date the notice of lien is filed with the county clerk. In addition, the cost and the interest thereon shall be a lien against the property from the date the notice of the lien is filed with the county clerk. The lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and liens against the property. The lien shall continue until the cost of removal is fully paid. At the time of collection, the county treasurer shall collect a fee of Five Dollars (\$5.00) for each parcel of property. Said fee shall be deposited to the credit of the general fund of the county. At any time prior to collection of the costs of removal, the municipality may pursue any civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an

action in rem to foreclose the lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created pursuant to this subsection. Upon receiving payment, the municipal clerk shall forward to the county treasurer a notice of payment and shall direct discharge of the lien.

G. The municipality may designate, by ordinance, an administrative officer or administrative body to carry out the duties of the municipal governing body required by this section. The property owner shall have the right of appeal to the municipal governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the municipal clerk within ten (10) days after the administrative order is rendered.

H. If a municipal governing body causes graffiti within the municipal limits to be removed pursuant to this section, any subsequent need for graffiti removal within a one-year period shall constitute a public nuisance and removal may be summarily performed by the municipal governing body without further prior notice to the property owner or mortgage holder. At the time of each summary removal of graffiti, the municipality shall notify the property owner and mortgage holder of the removal and the costs thereof. The notice shall state that the property owner may request an appeal with the municipal clerk within ten (10) days after the mailing of the notice. The procedures for notice and hearing on appeal shall be those procedures provided in subsections B, C, D and E of this section. Unless otherwise determined at the hearing, the cost of removal of graffiti pursuant to this subsection shall be determined and collected pursuant to subsections E and F of this section.

I. For the purposes of this section, "graffiti" means any inscription, slogan, drawing, or other marking which is crudely scratched, drawn, printed, painted or scribbled on a wall or other

surface visible to the public. This definition shall not be construed to include any sign or advertising device lawfully erected or installed by the owner, lessee, or authorized agent of the property. "Owner" means the owner of record as shown by the most current tax rolls of the county treasurer.

J. The authority granted to a municipal governing body by this section shall be cumulative and nothing in the provisions of this section shall prevent the municipality from abating graffiti as a nuisance or otherwise exercising its police power to protect the health, safety, or welfare of the general public. The officers, employees and agents of the municipality shall not be liable for any damages or loss of property due to removal of graffiti performed pursuant to the provisions of this section.

K. The provisions of this act shall not apply to any property zoned and used for agricultural purposes.

SECTION 2. This act shall become effective September 1, 1991.

43-1-5812

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