

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1517

By: Nance

AS INTRODUCED

An Act relating to cities and towns; amending 11 O.S. 2001, Section 22-112.2, which relates to removal of graffiti by municipalities; providing for removal expenses by property owners under certain circumstances; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 22-112.2, is amended to read as follows:

Section 22-112.2 A. A municipal governing body may cause graffiti to be removed from property within the municipal limits in accordance with the following procedures:

1. The property owner and the tenant, if any, may give their written consent to the municipality authorizing removal of the graffiti. By giving such written consent, the owner and the tenant each waives the right to notice and a hearing by the municipality as otherwise required by this section;

2. If the consent of the property owner and the tenant, if any, to remove graffiti from the property cannot be obtained, the municipality may remove the graffiti without such consent pursuant to the procedures set forth in this section;

3. To remove graffiti from property without the consent of the property owner and the tenant, if any, at least ten (10) days' notice shall be given by mail directed to the address shown by the current year's tax rolls in the county treasurer's office. Notice to the tenant, if any, shall be given by mail directed to the

property address. The notice shall order the property owner and the tenant, if any, to remove graffiti from the property and shall further state that unless such work is performed within twenty (20) days of the date of the notice the work shall be done by the municipality. At the time of mailing of notice to the property owner and the tenant, if any, 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 mailee(s). In addition, notice shall be given by posting a copy of the notice on the property at least one time not less than ten (10) days prior to any hearing or action by the municipality. If a municipal governing body anticipates summary abatement of graffiti in accordance with the provisions of subsection B of this section, the notice shall state that any accumulations of graffiti on the property occurring within one (1) year from and after the date of the notice may be summarily abated by the municipality without a hearing and further prior notice to the property owner or the tenant, if any, except by posting of notice at least one time on the property once not less than two (2) business days prior to such summary abatement;

4. A hearing may be held by the municipal governing body to determine whether the accumulation of graffiti on the property has caused the property to become detrimental or a hazard to the health, safety, or general welfare of the public and the community;

5. Upon finding that the condition of the property constitutes a detriment or hazard, and that the property, the public, and the community would be benefited by removal of such conditions, the agents of the municipality are granted the right of entry onto the property for the removal of the graffiti thereon and for performance of the necessary duties as a governmental function of the municipality; and

6. The municipality may designate by ordinance an administrative officer or administrative body to perform the functions set forth in this section. The property owner and the tenant, if any, shall have a 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) business days after the administrative order is rendered.

B. If a notice is given by a municipal governing body to a property owner and tenant, if any, ordering graffiti to be removed from property within the municipal limits in accordance with the procedures provided for in subsection A of this section, any subsequent accumulations of graffiti on the property occurring within a one (1) year period may be summarily abated without further prior notice to the property owner or the tenant, if any. However, prior to the summary abatement by the municipality, notice thereof shall be posted at least one time on the property not less than two (2) business days prior to such summary abatement. This subsection shall not apply if the records of the county clerk show that the ownership and/or tenancy of the property was transferred after notice was given pursuant to subsection A of this section.

C. Removal of graffiti by a municipality pursuant to the provisions of this section shall be performed at the sole expense of the municipality. However, after the third accumulation of graffiti on the property within a three-year period, beginning from the first incident of removal, the owner shall be responsible for the expenses of removal of graffiti. In removing the graffiti, the municipality shall restore the property as nearly as possible to the condition as it existed immediately prior to the graffiti being placed on the property.

D. 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 general welfare of the public.

E. The municipality and its officers, employees or agents shall not be liable for any damages or loss of property due to the removal of graffiti performed pursuant to the provisions of this section.

F. Nothing in this section shall prohibit the municipal governing body from enacting ordinances concerning the removal of graffiti that are more strict than this section.

G. For the purposes of this section:

1. "Advertising" means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner or tenant of the property, or an agent of such owner or tenant, for the purpose of promoting products or services or conveying information to the public;

2. "Graffiti" means, without limitation, any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, fence, gate, building or other structure; provided, this definition shall not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, or by an authorized agent for such owner or tenant;

3. "Owner" means the owner of record as shown by the most current tax rolls of the county treasurer;

4. "Removal", "remove", or "removed", when used in relation to the eradication of graffiti means the act of taking graffiti off of, or masking the presence of graffiti on, a rock, tree, wall, bridge, fence, gate, building or other structure; and

5. "Tenant" means any person shown by the records of the county clerk's office as a lessee of property, or any person lawfully in actual physical possession of property.

SECTION 2. This act shall become effective July 1, 2003.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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