ORDINANCE NO. 2334

AN ORDINANCE AMENDING CHAPTER 131 OF THE HERMISTON MUNICIPAL CODE, ENTITLED "GRAFFITI."

Whereas, the staff of the City of Hermiston is conducting a major review of the City's Code of Ordinances, now, therefore,

The City of Hermiston ordains as follows:

(New language is in red and underlined and repealed language has ~~a line through it~~.)

Section 1. Section 131.01 of the Hermiston Municipal Code is amended to read:

131.01 DEFINITIONS.

For the purpose of this C~~c~~hapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AEROSOL PAINT CONTAINER. Any aerosol container adapted or made for spraying paint.

ETCHING DEVICE. A glass cutter, awl or any device capable of scratching or etching the surface of any structure or personal property.

FELT-TIP MARKER. Any indelible marker or similar implement with a tip which, at its broadest width, is greater than one-fourth inch.

GRAFFITI. Any inscription, word, figure or design that is marked, etched, scratched, drawn or painted on any surface that is not authorized by the owner or person in charge of the property.

GRAFFITI IMPLEMENT. An aerosol paint container, a felt tip marker, an etching device or a graffiti stick.

GRAFFITI STICK. A device containing a solid form of paint, chalk, wax, epoxy or other similar substance capable of being applied to a surface by pressure, and upon application, leaving a mark at least one-fourth of an inch in width.

Section 2. Section 131.02 of the Hermiston Municipal Code is amended to read:

131.02 POSSESSION OF GRAFFITI IMPLEMENT.

(A) No person may possess, with the intent to unlawfully apply graffiti on any real or personal property of another, any graffiti implement.

(B) It is unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan or otherwise furnish or cause to permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any person under the age of 18 years unless such person is lawfully emancipated under Oregon law.

(C) It is unlawful for any person under the age of 18 years to possess a graffiti implement unless such person is lawfully emancipated under Oregon law.

(D) It shall be an affirmative defense to charges under subsections (B) and (C) of this section when:

(1) Transfer is from a parent or legal guardian and possession occurs upon real property with permission from the owner, occupant, or person having lawful control of such property;

(2) Transfer is from an employer for employment activity of the minor;

(3) Transfer is from a school official for a school sanctioned activity;

(4) Transfer is from a city official for a city sanctioned activity.

(E) Unlawfully possessing or furnishing a graffiti implement is a Class C violation.

Section 3. Section 131.03 of the Hermiston Municipal Code is amended to read:

131.03 SEIZURE AND IMPOUNDMENT.

In addition to any citation issued, a graffiti implement possessed in violation of § 131.02 is deemed to be contraband and may be ~~immediately~~ seized and impounded by the Police Department in conjunction with issuance of a citation. The court, upon disposition of the issued citation, shall determine whether the instrument shall be returned to the defendant or deemed contraband and disposed of according to state law.

Section 4. Section 131.04 of the Hermiston Municipal Code is amended to read:

131.04 PARENTAL RESPONSIBILITY.

(A) No parent, guardian or other person having the legal custody of a minor person under the age of 18 years may allow or permit the minor to be in violation of § 131.02 ~~above~~ or § 131.07.

(B) Upon a subsequent violation by a minor, the parent, guardian or person having legal custody, shall be served with a subpoena or other notice to appear with the minor and show cause why § 131.02 ~~above~~ or § 131.07 has been violated a second time.

Section 5. Section 131.06 of the Hermiston Municipal Code is amended to read:

131.06 COMMUNITY SERVICE.

In lieu of any fine that may be imposed for violation of § 131.02, ~~the~~ a court may order community service as follows:

(A) Up to 50 hours of community service which may include removing graffiti, either those that the defendant created, those created by another, or both.~~Upon conviction for unlawfully possessing a graffiti implement, the person shall perform at least 20 hours of community service;~~

(B) The ~~entire period of~~ community service shall be performed pursuant to ORS 137.128. ~~under the supervision of a community service provider approved by the court; and~~

~~(C) Reasonable effort shall be made to assign the subject person to a type of community service that is reasonably expected to have the most rehabilitative effect on the person. To the extent that the offense giving rise to the offer of community service constitutes a violation of § 131.02, reasonable effort shall be made by the court to assign the person to community service which constitutes in significant part the removal of the graffiti~~.

Section 6. Section 131.07 of the Hermiston Municipal Code is amended to read:

131.07 UNLAWFULLY APPLYING GRAFFITI

(A) A person commits the violation of unlawfully applying graffiti if the person, having no right to do so nor reasonable ground to believe that the person has such right, applies graffiti to the property of another.

(B) In lieu of a fine, the court may order up to 100 hours community service, which may include graffiti removal, either those that the defendant created, those created by another, or both. Community service shall be performed pursuant to ORS 137.128.

Section 7. Section 131.99 of the Hermiston Municipal Code is amended to read:

131.99 PENALTY.

A. Violation of §Section 131.107 is a Class B violation. Any other violation of this Chapter is a Class C violation, subject to the option for community service in lieu of a fine as provided in § 131.06. ~~A conviction for the violation of § 131.02, or violating parental responsibility under § 131.04, is punishable as a Class A violation. Upon conviction for unlawfully possessing a graffiti implement, the court shall impose a mandatory minimum specific fine violation of $100.~~

B. Nothing in this Chapter precludes the City from declaring graffiti to be a nuisance as and pursuing the remedies provided in Chapter 92.

Section 8. Effective date. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by the Common Council this 13th day of December 2021.

SIGNED by the Mayor this 13th day of December 2021.

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Dr. David Drotzmann, Mayor

ATTEST:

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Lilly Alarcon-Strong, CMC, City Recorder