



VILLAGE OF CORRALES

ORDINANCE NO. 13-012

AN ORDINANCE PROHIBITING UNAUTHORIZED GRAFFITI ON PUBLIC AND PRIVATE PROPERTIES IN THE VILLAGE OF CORRALES; REQUIRING THE PROMPT REMOVAL, PAINTING OVER OR CONCEALMENT OF SUCH GRAFFITI WHERE THEY ARE FOUND; AUTHORIZING THE VILLAGE TO REMOVE, PAINT OVER OR CONCEAL UNAUTHORIZED GRAFFITI ON PUBLIC OR PRIVATE PROPERTY; PROVIDING FOR THE VILLAGE TO RECOVER ITS COSTS INCURRED; AND PROVIDING A PENALTY FOR VIOLATION.

WHEREAS, certain walls, buildings, signs and other structures in the Village have repeatedly been marked by unauthorized graffiti; and

WHEREAS, the Village Council, the governing body (“Governing Body”) of the Village of Corrales (the “Village”) finds that the presence of unauthorized graffiti where such graffiti are visible to the public is visually offensive, constitutes a public nuisance, tends to reduce property values, and is detrimental to the quality of life in the Village; and

WHEREAS, the Governing Body further finds that the creation of unauthorized graffiti should be strictly prohibited; and

WHEREAS, the Governing Body further finds that where unauthorized graffiti are created in locations visible to the public, whether on public or private property, such graffiti should be promptly removed, painted over or concealed for the preservation of the property values and quality of life of residents in and visitors to the Village; and

WHEREAS, to the extent possible the costs of graffiti removal, painting over or concealment should be borne by those persons illegally creating the unauthorized graffiti, and if such persons cannot be identified should be borne by the owners of the properties benefitted by graffiti removal, painting over or concealment so as not to become a burden on the public treasury of the Village; and

WHEREAS, persons illegally creating unauthorized graffiti on any property in the Village, whether such property is public or private, should be punished for their vandalism and required to pay restitution in accordance with law.

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Village of Corrales that:

1. Definitions.

As used in this ordinance, the following terms shall have the meaning indicated, unless a different meaning is clearly required by the context:

“Graffiti” means any unauthorized inscription, word, figure, painting or other marking or defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by means of an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface, without the prior approval of the owner or occupant of such property.

2. Graffiti prohibited.

It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any public or private property at any location in the Village where such graffiti are visible to the public. Any person violating this subsection shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished in accordance with section 1-6. Alternatively, such person may be charged in an appropriate court with violation of Section 30-15-1.1, NMSA 1978, and penalized in accordance with the provisions thereof.

3. Removal or concealment of graffiti.

A. The property owner or occupant has the primary responsibility for removal of unauthorized, offensive or otherwise prohibited graffiti. Upon becoming aware of any such graffiti located upon private property, the Village will notify the property owner or occupant by the most expeditious means reasonably available that the graffiti must be removed within two (2) weeks. Notice may be delivered in person, by mail, or by posting on the affected property. The notice shall advise the property owner or occupant that if the owner or occupant does not promptly remove, paint over or conceal the graffiti from public view, then the Village may enter upon the property and remove, paint over or otherwise conceal the graffiti. The notice shall further advise the property owner or occupant that, if the owner or occupant objects to the removal, painting over or concealment of the graffiti, then the owner or occupant must file an objection and request for hearing in the office of the Village clerk within two (2) weeks of delivery of the notice. If the graffiti remain in place two (2) weeks after notice and the property owner or occupant has not filed an objection or request for hearing, then the Village may cause the graffiti to be removed, painted over or concealed at the Village’s discretion and in such manner as the Village deems most appropriate and convenient.

B. Upon becoming aware of any unauthorized, offensive or otherwise prohibited graffiti on Village-owned property, the Village shall cause the graffiti to be promptly removed, painted over or otherwise concealed in the manner deemed most appropriate and convenient by the Village administration.

C. Upon becoming aware of any unauthorized, offensive or otherwise prohibited graffiti on public property owned or controlled by a public entity other than the Village, the Village shall promptly contact the affected entity and request that the graffiti be removed, painted over or concealed, or in the alternative request authority for the Village to enter upon the property and remove, paint over or conceal the graffiti.

4. Cost of graffiti removal or concealment.

A. If the person or persons who created unauthorized, offensive or otherwise prohibited graffiti is or are known to the Village, the Village shall demand compensation from such person or persons in an amount sufficient to cover all costs, direct and indirect, for removal, painting over or concealment of the graffiti. If any such person is a minor, the Village may demand compensation from the minor's parents or legal guardians. Compensation for the costs of graffiti removal, painting over or concealment shall be in addition to, and not in lieu of, any other fines or penalties that may be imposed pursuant to this ordinance, Section 30-15-1.1, NMSA 1978, or any other provision of law.

B. If a property owner or occupant, after notice from the Village pursuant to subsection 3.A of this ordinance, fails to remove, paint over or otherwise conceal the graffiti located on his or her property or request a hearing as provided therein, and the Village undertakes to remove, paint over or conceal such graffiti, the Village shall invoice the property owner or occupant for the Village's actual costs incurred to remove, paint over or conceal the graffiti, and such costs upon recovery from the owner or occupant shall be deposited into the Village's general fund, or such fund as was used to pay for the removal of the graffiti if not the general fund. If the owner or occupant objects to the costs as presented in the invoice, the owner or occupant may, within two (2) weeks after receipt of the invoice, request a hearing to consider whether the costs should be modified, adjusted or abated.

5. Hearing and appeal process.

If a property owner or occupant objects to proposed removal, painting over or concealment of graffiti and requests a hearing as provided in subsection 3.A of this ordinance, or if an owner or occupant requests a cost hearing as provided in subsection 4.B of this ordinance, then the Mayor or the Administrator, upon the authority of the Mayor, shall provide for an administrative hearing to allow the owner or occupant an opportunity to present testimony and evidence tending to show why the graffiti should not be removed, painted over or concealed, or why the assessed costs should be modified, adjusted or abated. The hearing shall be before the Mayor, the Administrator or a hearing officer appointed by the Mayor. The owner or occupant of the affected property shall be provided at least 72 hours notice of the hearing. The Mayor, Administrator or hearing officer acting on behalf of the Mayor shall render a decision within five (5) business days after the hearing is concluded, and the owner or occupant shall be provided notice of the decision by certified mail or other reliable method of notification. Any person aggrieved by a decision of the Mayor, Administrator or hearing officer after hearing on a matter relating to graffiti removal, painting over or concealment may, within ten (10) days following notice of such decision, appeal the decision to the governing body. Proceedings on an appeal to the governing body shall be de novo, and the governing body may affirm, reverse or modify the decision of the Mayor or hearing examiner. The decision of the governing body shall be final.

SEVERABILITY CLAUSE: Should any section, paragraph, clause or provision of this Ordinance be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance. The Governing Body of the Village of Corrales hereby declares that it would have


passed this Ordinance and each section, subsection, sentence, clause, word or phrase hereof irrespective of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise invalid.

COMPILING CLAUSE: This Ordinance shall be incorporated in and compiled as a part of the Code of Ordinances of the Village of Corrales.

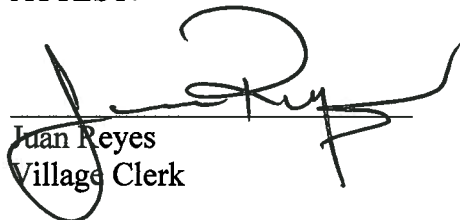
EFFECTIVE DATE AND PUBLICATION: This Ordinance shall become effective and be in full force and effect from and after its passage, publication and posting, according to law.

PASSED, APPROVED AND ADOPTED by the Governing Body of the Village of Corrales, New Mexico, this 13th day of August, 2013.

APPROVED:


The Honorable Phillip Gasteyer
Mayor, Village of Corrales

ATTEST:


Juan Reyes
Village Clerk