

**ORDINANCE NO. 12042006001**

**AN ORDINANCE RELATING TO**

**THE CONTROL AND PREVENTION OF GRAFFITI IN THE  
UNINCORPORATED TERRITORY OF LARIMER COUNTY**

**WHEREAS**, pursuant to Colorado Revised Statutes § 30-15-401, the Board of County Commissioners of Larimer County has the power to adopt ordinances for control or licensing of those matters of purely local concern; and

**WHEREAS**, pursuant to Colorado Revised Statutes § 30-15-401, matters of purely local concern include the prevention and suppression of riots, routs, affrays, disturbances, and disorderly assemblies in any public or private place, and C.R.S. § 30-15-401 (1)(d.5) further provides for the restraint and punishment of defacement of public and private property by juveniles; and

**WHEREAS**, pursuant to C.R. S. §§ 29-20-102 and 29-20-104, the Board of County Commissioners of the County of Larimer, State of Colorado, has the power to plan for and regulate the use of land on the basis of impact on the community and the surrounding areas, and preserve areas of historical and archaeological importance; and,

**WHEREAS**, it has come to the attention of the Board of County Commissioners of Larimer County, that residents have experienced problems with graffiti, and disturbances and vandalism associated with the placement of such graffiti; and

**WHEREAS**, the Board of County Commissioners of the County of Larimer, State of Colorado, has been presented with information from law enforcement officials that graffiti within the County may be a method of communication within and between criminal organizations to the detriment of the public safety; and

**WHEREAS**, the Board of County Commissioners of the County of Larimer, State of Colorado, finds and determines that graffiti on public and private property is a blighting factor which not only depreciates the value of the property upon which it is located, but also depreciates the value of the adjacent and surrounding properties, and in so doing negatively impacts the entire community; and,

**WHEREAS**, the Board of County Commissioners of the County of Larimer, State of Colorado, further finds and determines that abatement of such conditions will enhance the appearance of and benefit the use and enjoyment of properties in the County, and improve the values and appearance of neighboring properties; and,

**WHEREAS**, the Board of County Commissioners finds and determines that graffiti and other inscribed materials invite further placement of graffiti and other inscribed material, and that surrounding property then becomes subject to graffiti and other inscribed

material with the result that entire neighborhoods are effected and the entirety of the community becomes a less desirable place in which to reside; and

**WHEREAS**, the Board of County Commissioners of the County of Larimer, State of Colorado, finds and determines that graffiti must be rapidly abated so as to avoid detrimental impacts on the public peace, health, safety and welfare of the citizens of Larimer County.

**NOW THEREFORE, BE IT ORDAINED**, by the Board of County Commissioners of Larimer County, State of Colorado, as follows:

**Section 1. Legislative Declaration:**

1.1 This Ordinance shall be known and may be cited as the "Larimer County Graffiti Ordinance."

1.2 The County Commissioners find and declare that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, or handicap, to be secure and protected from intimidation and physical harm caused by the activities associated with the application of graffiti and the property destruction done by said graffiti. It is not the intent of this Ordinance to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The County Commissioners hereby recognize the constitutional right of every citizen to harbor and express beliefs of any subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for redress of perceived grievances, and to participate in the electoral process.

1.3 The County Commissioners further find that the citizens of Larimer County are concerned as a result of gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

1.4 In conjunction with the aforementioned crimes, there has been a proliferation of graffiti. It is the intent of the County Commissioners in enacting this Ordinance to prevent the destruction of public or private property by the application of graffiti.

1.5 It is also the purpose and intent of this Ordinance to provide a procedure for removal of graffiti from public and privately owned property in order to reduce deterioration of neighborhoods within the unincorporated areas of Larimer County.

1.6 In consideration of the purposes and recitals stated above, it is the intent of this Ordinance to reduce crime, protect communities, and avoid deterioration of neighborhoods due to graffiti on public and privately owned property. It is further intended that this Ordinance provide for the abatement of graffiti and for the imposition of fines and costs related to the removal of graffiti on public or private property.

## **Section 2: Definitions.**

As used in this Ordinance the following words are defined as follows:

2.1 "*Board*" - means the Board of County Commissioners of Larimer County, Colorado.

2.2 "*Day*" – means any business day and shall exclude Saturday and Sunday or any legal County holiday.

2.3 "*Graffiti*" - means the defacing or tagging of public or private property by one or more persons by means of painting, drawing, dye, chalk, ink, writing, etching, carving with knives, carving with scribes, or any similar method or substance without the written consent of the Property Caretaker.

2.4 "*Enforcement Officer*" means, a peace officer as defined in C.R.S. § 18-1-901(3)(1), or, pursuant to C.R.S. § 30-15-402.5, any official charged with enforcement of zoning regulations within unincorporated Larimer County, including Code Compliance Officers employed by the Code Compliance Section of the Larimer County Planning and Building Services Division.

2.5 "*Property*" - means any real property, including structures and fixtures.

2.6 "*Property Caretaker*" - a person owning, leasing, occupying or having control or possession of any property within Unincorporated Larimer County.

2.7 "*Sheriff*" - means the Sheriff of Larimer County or his duly appointed Deputies.

2.8 "*Structure*" means any improvement to real property and shall include but not be limited to walls, sidewalks, windows, fixtures, sheds, storage units, semi-tractor trailers, mobile storage and masonry.

2.9 "*Unincorporated Larimer County*" - that portion of Larimer County, Colorado not within the corporate boundaries of a municipality.

## **Section 3: Applicability**

This Ordinance shall apply to all portions of unincorporated Larimer County.

## **Section 4: Notice to Remove Graffiti:**

4.1 Whenever an Enforcement Officer determines that graffiti exists on property which is visible to any member of the public, the Enforcement Officer may serve a written notice in accordance with the procedures outlined in Section 5, to the Property Caretaker to abate such graffiti. The party so noticed shall have ten (10) days after the date notice is served to remove the graffiti.

4.2 The notice shall be substantially in the following form:

**NOTICE TO REMOVE GRAFFITI**

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**NOTICE IS HEREBY GIVEN**, pursuant to the "Larimer County Graffiti Ordinance," which requires graffiti, visible to the public, located on the property commonly known as \_\_\_\_\_, Larimer County, Colorado, to be removed or painted over within ten (10) days after issuance of this notice.

If you fail to abate such graffiti, County employees or private contractors approved by the County are authorized to enter upon your property and abate such graffiti by removal or painting over the graffiti. You shall be required to pay all reasonable costs for such removal.

**If you fail to abate the graffiti and if you object to the County entering the property, you must provide your written objection within the ten (10) day period to the Code Compliance Section of the Larimer County Planning and Building Services Division located at 200 W. Oak St., Fort Collins, Colorado 80521. If you object, a hearing shall be set before the Board of County Commissioners.**

**If such written notice is not received, you are consenting to Larimer County or private contractors entering your property to abate, cover or remove the graffiti; and you consent to pay all reasonable costs for such removal.**

If you would like to discuss this matter, you may contact the Code Compliance Section of the Larimer County Planning and Building Services Division at (970) 498-7700. Contacting the Code Compliance Section does not negate your obligation to abate the graffiti or file a written objection within ten (10) days.

**Section 5: Service of Notice.**

5.1 A "Notice to Remove Graffiti" as outlined in Section 4 shall be served in one of the following manners:

- a. By personal service pursuant to Colorado Rule of Civil Procedure 4(e), or

b. By certified mail sent to the address of any person with an interest appearing on the property tax rolls and the address where the graffiti is located if different, and by sending an additional copy by regular mail. If no such address appears on the property tax rolls, notice shall be sent to the address of the premises where the graffiti exists by both certified and regular mail.

1. If both the certified mail and regular mail notice are returned undelivered, the notice may be served by posting the same in a conspicuous place on the premises where the graffiti exists. Attempting personal service is not required prior to posting of the notice.

5.2 Notice is deemed to be received for purposes of Section 4, as follows:

a. if service is attempted using personal service, notice is provided upon personal service, pursuant to C.R.C.P. 4;

b. if service is obtained through certified mail, notice is provided upon signature by any recipient; and service is presumed to be obtained through regular mail three (3) days after mailing

c. if service is obtained through posting, notice is presumed to have been provided (3) days after posting.

**Section 6: Failure to Abate by Property Caretaker:**

6.1 If after notice, the graffiti has not been abated and no objection to the County entering the property has been received within the allotted ten (10) day period, the Enforcement Officer may arrange for County employees, private contractors or another County program, to enter upon the property and abate, cover or remove such graffiti. The Property Caretaker shall pay all reasonable costs for the removal of such graffiti. In addition to such costs, the Property Caretaker shall also pay associated administrative expenses, which shall not exceed two hundred dollars (\$200).

6.2 If a Property Caretaker objects in writing within the ten (10) day period following notice, to the County entering the subject property to abate, cover or remove the graffiti, a hearing shall be scheduled before the Larimer County Board of County Commissioners ("Board"). The Property Caretakers or any other persons having an interest of record in the property from which graffiti is to be abated shall be given written notice of such hearing. Notice of such hearing shall be given in the same manner as the "Notice to Remove Graffiti" pursuant to Section 5.

6.3 At the hearing the Enforcement Officer shall demonstrate by a preponderance of the evidence, the existence of graffiti on the subject property. The Property Caretakers or such persons with an interest of record who are in attendance at the hearing may then give evidence and show cause why the graffiti should not be abated forthwith.

6.4 If the Board finds that graffiti exists on the property as alleged and that the Property Caretakers or other persons with an interest of record in the property have failed to abate such graffiti, without good cause, within ten (10) days after receiving notice thereof, then the Board shall issue an order authorizing Larimer County or other abatement personnel (such as private contractors) to enter upon the property for the purpose of abating, covering or removing such graffiti; and that the persons failing to abate such graffiti shall pay all reasonable costs for the removal of such graffiti, plus administrative expenses not to exceed two hundred dollars (\$200.00).

**Section 7: Assessment of Costs:**

7.1 If the County abates, covers or removes graffiti from the subject property, a notice of assessment shall be provided to a Property Caretaker. All costs must be paid by the Property Caretaker within thirty (30) days from the date of the Notice of Assessment, plus administrative expenses not to exceed two hundred dollars (\$200.00). The Notice of Assessment shall specify the work done, including the itemized and total cost of the work.

7.2 If assessed costs and administrative expenses for the removal of graffiti are not paid within thirty (30) days from the date of the Notice of Assessment, the Director of the Planning and Building Services Division or his designee shall file with the clerk of the Board of County Commissioners a copy of the Notice of Assessment.

7.3 The Commissioners shall fix a time, date and place for hearing regarding the Notice of Assessment and any protests or objections thereto. The clerk to the Board of County Commissioners shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in the County, and served by regular and certified mail, postage prepaid, addressed to the Property Caretaker and all other property owners of record. Such notice shall be given at least ten (10) days prior to the date set for the hearing and shall specify the day, hour and place when the Board of County Commissioners will hear and pass upon the Assessment Notice, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

7.4 Any person interested in or affected by the proposed charge may file written protests or objections with the clerk to the Board of County Commissioners at any time prior to the time set for the hearing on the Assessment Notice. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. The clerk to the Board of County Commissioners shall endorse on every such protest or objection the date of receipt. The clerk shall present such protests or objections to the Board of County Commissioners at the time set for the hearing, and no other protests or objections shall be considered, unless otherwise authorized by the Board of County Commissioners.

7.5 Upon the day and hour fixed for the hearing, the Board of County Commissioners shall hear and pass upon the Assessment Notice together with any such objections or

protests. The legislative body may make such revision, correction or modification in the Assessment Notice or the charges as it may deem just; and when the Board of County Commissioners is satisfied with the correctness of the charge, the Assessment Notice (as submitted or as revised, corrected or modified) together with the charge, shall be affirmed or rejected. The decision of the Board of County Commissioners on the Assessment Notice and the charge, and on all protests or objections, shall be final and conclusive.

7.6 The Board of County Commissioners may thereupon order that said charge shall be made a personal obligation of the Property Caretaker, any other owner of record, the responsible individual and/or assess said charge against the property involved, and may:

(a) seek collection through any court of competent jurisdiction, along with all associated costs, including reasonable attorney fees and/or

(b) certify the assessment amount, plus a ten (10) percent collection fee, to the county treasurer for collection in the same manner as though it was part of the property taxes.

7.7 The validity of any assessment made under the provisions of this Ordinance shall not be contested in any action or proceedings unless the same is commenced within thirty (30) days after the assessment is placed upon the tax roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within thirty (30) days after the entry of such judgment.

7.8 Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

7.9 All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of ten (10) percent per annum from and after said date.

7.10 After confirmation of the Assessment Notice, certified copies of the assessment shall be given to the assessor and the treasurer for the County, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for County purposes.

7.11 The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

7.12 All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the Larimer County Treasurer, who shall credit the same to the Larimer County Graffiti Removal Account.

**Section 8: Alternative Remedies.**

It is the intent of the Board of County Commissioners that the provisions and procedures set forth in this Ordinance shall not expressly or by implication repeal or supersede any other provisions or procedures under County Ordinance, State law, or otherwise. This Ordinance shall supplement existing procedures and will provide an alternative, non-exclusive procedure for the abatement of graffiti nuisances. Nothing in this Ordinance shall preclude abatement of graffiti by Larimer County through civil process by means of preliminary or permanent injunction or in any other manner provided by law for the abatement of such nuisance. Nothing in this Ordinance shall preclude or prohibit Larimer County from resorting to any appropriate legal remedy, whether civil or criminal, in the abatement of any graffiti, and when utilized, the hearing and appeal procedures provided in this Ordinance to determine the existence of a nuisance shall not be applicable.

**Section 9: Public Property.**

Where property is owned by a public entity other than the County of Larimer, the Assessment of Costs provisions contained in this Ordinance shall not apply. All other provisions of this Ordinance shall apply.

**Section 10: Severability:**

If any one or more of the provisions of this Ordinance are determined by a court of law to be invalid, such determination shall not affect the validity of the remaining provisions of this Ordinance.

**Section 11: Effective Date:**

11.1 This Ordinance shall take effect upon adoption by the Board of County Commissioners of Larimer County, State of Colorado, for the immediate preservation of the health and safety of the residents of the unincorporated portions of the County, and the Board of County Commissioners further authorizes publication of this Ordinance in book or pamphlet form.

11.2 Any future amendment to this Ordinance may be accomplished by resolution of the Board of County Commissioners and shall be effective thirty (30) days following publication of such amendment.