Petitioner: Sabra Smith Newby, Chief Administrative Officer

Recommendation:

That the Board of County Commissioners conduct a public hearing; and approve, adopt, and authorize the Chairman to sign an ordinance amending Title 11 of the Clark County Code, by adding a new Chapter 11.11 relating to the covering or removal of graffiti on open areas adjacent to streets; making related amendments to Chapter 11.12, concerning covering or removal of graffiti on nonresidential property; and provide for other matters properly relating thereto. (For possible action)

FISCAL IMPACT:

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BACKGROUND:

Clark County Code currently has two Chapters in Title 11 directly relating to the covering or removal of graffiti – one for residential property and one for nonresidential property. This proposed ordinance would add a third chapter to specifically address the issue of graffiti on open areas adjacent to streets whether residential or nonresidential property. The proposed ordinance defines "open area adjacent to a street" and establishes under what circumstances the procedure for covering or removing graffiti in the new chapter would be used in lieu of the procedures in the current code. This ordinance to be introduced is proposed under the State’s new home rule authority for Counties enacted last Legislative Session under SB 29 of 2015, which specifically provides that graffiti is a matter of local concern appropriately to be addressed by counties as a matter of home rule. As policy, through enactment of prior authorizing legislation, the State sought to minimize the impact of imposing the cost of graffiti remediation on owners of single family residences, as they are generally victims, but not other property owners that could pass along costs along with those of other business expenses. The ordinance here, strikes a balance between the need for rapid removal and cost allocation, ensuring that all have access to appropriate due process, and the interest of the public at large for rapid removal of graffiti to prevent further blight and related crime.

This proposed ordinance has been reviewed by the District Attorney's Office.

The proposed ordinance amendment was introduced at the April 5, 2016 Board of County Commission meeting and a public hearing is scheduled for April 19, 2016, at 10 a.m.

ACTION: APPROVED (INCLUDING ADOPTION OF ORDINANCE NO. 4385) AS RECOMMENDED

Respectfully submitted,

Sabra Smith Newby
Chief Administrative Officer
SUMMARY – An Ordinance amending title 11 of the Clark County Code, by adding a new chapter 11.11, -relating to the covering or removal of graffiti on open areas adjacent to streets; making related amendments to chapter 11.12, concerning covering or removal of graffiti on non-residential property; and providing for other matters properly relating thereto.

ORDINANCE NO. 4385
(of Clark County, Nevada)
AN ORDINANCE AMENDING TITLE 11 OF THE CLARK COUNTY CODE, BY ADDING A NEW CHAPTER 11.11, RELATING TO THE COVERING OR REMOVAL OF GRAFFITI ON OPEN AREAS ADJACENT TO STREETS; MAKING RELATED AMENDMENTS TO CHAPTER 11.12, CONCERNING COVERING OR REMOVAL OF GRAFFITI ON NON-RESIDENTIAL PROPERTY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 11 of the Clark County Code is amended by the addition of a new chapter, designated as Chapter 11.11, to read as follows:

Chapter 11.11 - COVERING OR REMOVAL OF GRAFFITI
ON OPEN AREAS ADJACENT TO STREETS

11.11.010 – Definitions.
Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this chapter.

(a) "Graffiti" means any unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn, painted on or affixed to the public or private property, real or personal, of another, which defaces such property. The term does not include any item affixed to property which may be removed:

   (1) By hand without defacing the property;
   (2) Through the use of a chemical or cleaning solvent commonly used for removing an adhesive substance without defacing the property; or
   (3) Without the use of a decal remover tool which, for purposes of this provision, means a device using power or heat to remove an adhesive substance.

(b) "Graffiti that is inherently dangerous" means graffiti the content of which would not be constitutionally protected if it were made in a lawful forum because of its potential to cause harm including, but not limited to:

   (1) Graffiti that by its very observation tends to incite an immediate breach of the peace;
   (2) Personally abusive epithets, if addressed to an ordinary citizen and inherently likely to provoke a violent reaction;
   (3) Advocacy of the use of force or of law violation that is directed to inciting or producing imminent lawless reaction and likely to incite or produce such reaction; and
   (4) Graffiti meaning to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.

(c) "Residential property" means a parcel of land, including all structures thereon, that is an owner-occupied single-family residence in unincorporated Clark County.

(d) "Nonresidential property" means all real property, including but not limited to all structures and fixtures thereon, in unincorporated Clark County, other than property that is an owner-occupied single-family residence or that is owned by a governmental entity.

(e) "Officers, employees or other designees of the county" means those employees of the Clark County public response office and such other individuals or entities designated by the
board, the county manager or the manager of Clark County code enforcement to cover or remove graffiti.

(f) "Open area adjacent to a street" means:
   (1) An exterior facing fence, wall or object on the perimeter of the property, located within 100 feet of a street;
   (2) Any fence, wall or object on a vacant lot adjacent to a street; or
   (3) Any fence, wall or object on the property, if the graffiti is inherently dangerous and visible from a street, to which access is not fully blocked by wall or fence with gate, or other lawful physical barrier.

(g) "Street" means a public access thoroughfare, whether publicly or privately owned, including all improvements within the right-of-way or easement, to be used for passage or travel by motor vehicles, bicycles and/or pedestrians whether designated a street, road, avenue, trail or otherwise.

(h) "Vacant lot" means a lot or parcel or real property, which is unimproved with lawful structures, except a fence or wall.

11.11.020 - Procedure

(a) Notwithstanding the procedures set forth in Chapters 11.10 and 11.12 of the Clark County Code, in order to protect the public health, safety and welfare of the residents of the county and to prevent blight upon and crime within the community, officers, employees or other designees of the county may cover or remove graffiti that is placed on private property in unincorporated Clark County, whether residential or non-residential, located on an open area adjacent to a street.

(b) Any owner may keep on file with the manager of code enforcement a written notice directing that his or her property, or any portion thereof, otherwise covered by this chapter, be excluded from its effect. Such notice shall have no bearing on the procedures provided in Chapters 11.10 and 11.12 of this Clark County Code, except to indicate their potential use.

(c) Unless a notice described in subsection (b) of this section is on file, any officers, employees or other designees of the county may cover or remove graffiti described in subsection (a) of this section at any time, without notice to the owner of the property. The county shall pay the post of covering or removing the graffiti.
SECTION 2. Section 11.12.020 of chapter 11.12 of title 11 of the Clark County Code is hereby amended to read as follows:


Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this chapter.

(a) "Appeal officer" means the person designated by the board to conduct the appeal of the hearing officer's decision concerning whether the graffiti must be covered or removed.

(b) "Board" means the board of county commissioners.

(c) "Graffiti" means any unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn, painted on or affixed to the public or private property, real or personal, of another, which defaces such property. The term does not include any item affixed to property which may be removed:

(1) By hand without defacing the property;
(2) Through the use of a chemical or cleaning solvent commonly used for removing an adhesive substance without defacing the property; or
(3) Without the use of a decal remover tool which, for purposes of this provision, means a device using power or heat to remove an adhesive substance.

[(d) "Graffiti that is inherently dangerous" means graffiti the content of which would not be constitutionally protected if it were made in a lawful forum because of its potential to cause harm including, but not limited to:

(1) Graffiti that by its very observation tends to incite an immediate breach of the peace;
(2) Personally abusive epithets, if addressed to an ordinary citizen and inherently likely to provoke a violent reaction;
(3) Advocacy of the use of force or of law violation that is directed to inciting or producing imminent lawless reaction and likely to incite or produce such reaction; and
(4) Graffiti meaning to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.]

[(e)] (d) "Hearing officer" means the person designated by the board to conduct the hearing to review the determination that the graffiti must be covered or removed.
"Nonresidential property" means all real property, including but not limited to all structures and fixtures thereon, in unincorporated Clark County, other than property that is an owner-occupied single-family residence or that is owned by a governmental entity.

"Official" means an officer or employee of the Code Enforcement Unit and such other individuals or entities designated by the board, the county manager or the chief of the code enforcement unit to cover or remove graffiti.

"Owner" means the person or entity owning the nonresidential property as described in the real property assessment rolls of the county.

"Property" means the nonresidential property of the owner upon which graffiti is located.

"Property that is inadequately maintained" means property that has been covered with graffiti and:

1. Is unoccupied because of the absence of complete development; lawful, physical human presence and possession; or substantial and practical use considering the purpose for which its development was intended; or
2. The graffiti, measured whenever practical by disconnected rectangular patches to the nearest linear foot, exceeds twenty-five square feet.

"Send" means delivery by certified mail, return receipt requested, although notices, decisions and orders may additionally be sent by regularly mail posting on the property or hand delivery. A notice, decision or order shall have been sent regardless of whether it is accepted as evidenced by the return receipt.

SECTION 3. Section 11.12.030 of chapter 11.12 of title 11 of the Clark County Code is hereby amended to read as follows:

11.12.030 - Procedures.

(a) In order to protect the public health, safety and welfare of the residents of the county and to prevent blight upon the community, an official may require the owner of nonresidential property to cover or remove graffiti that is placed on that property if:

1. The graffiti is inherently dangerous;
2. The property is inadequately maintained; or
3. The board, by resolution, directs enforcement under this chapter because the graffiti is otherwise harmful to the health, safety or welfare of the residents of the county.
(b) The county shall provide notices, hold hearings and appeals, and recoup costs as addressed in this chapter.

SECTION 4. Section 11.12.070 of chapter 11.12 of title 11 of the Clark County Code is hereby amended to read as follows:

11.12.070 - Covering or removing by the county. Graffiti may be covered or removed by officials employed or directed by the county. An official shall not cover or remove any more extensive area than the area where the graffiti is located. If the building, wall or other surface upon which the graffiti is located is of a uniform color, or color scheme when graffiti is covered with paint, officials shall attempt to match the paint with the color of the surface underlying the graffiti. Graffiti may be removed, by solvents, sandblasting or other method, if the surface underlying the graffiti is unpainted or removal is reasonably necessary in consideration of health, safety, welfare or cost.

SECTION 5. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 6. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 7. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on the 5th day of April, 2016.

PROPOSED BY: Commissioner [Signature]

PASSED on the 19th day of April, 2016.

AYES: [Signature]
This ordinance shall be in force and effect from and after the 3rd day of May 2016.