

RESOLUTION NO. 10-13

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "CHAPTER 19 GRAFFITI" RELATING TO THE PROHIBITION OF THE MAKING OF GRAFFITI WITHIN THE CITY LIMITS AND AMENDING CITY CODE OF THE CITY OF MARICOPA BY ELIMINATING ARTICLE 10-2 OF THE PREVIOUSLY ADOPTED CITY CODE AND REPLACING THAT ARTICLE WITH "CHAPTER 19 GRAFFITI".

WHEREAS, the City Council previously adopted Ordinances which prohibit the making of graffiti within the City limits; and

WHEREAS, staff for the City has provided some amendments to those Ordinances which clarify and expand the rules and regulations relating to graffiti; and

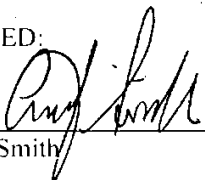
WHEREAS, the City Council believes that declaring such document a public record and adopting its provisions by reference will be in the City's best interests;

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Maricopa, Arizona as follows:

That certain document known as "Chapter 19 Graffiti" amending the Maricopa City Code by eliminating Article 10-2 of the previously adopted City Code and replacing that Article with "Chapter 19 Graffiti" relating to the prohibition of the making of graffiti within the City limits, is hereby declared to be a public record, and three (3) copies shall remain on file in the office of the City Clerk of the City of Maricopa for examination by the public.

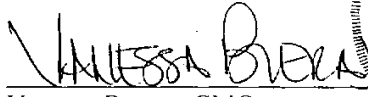
PASSED AND ADOPTED BY THE Mayor and Council of the City of Maricopa, Arizona, this 6th day of April, 2010.

APPROVED:



Anthony Smith
Mayor

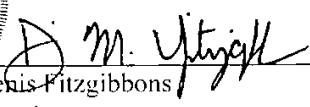
ATTEST:



Vanessa Bueras, CMC
City Clerk



APPROVED AS TO FORM:



Denis Fitzgibbons
City Attorney

CHAPTER 19 GRAFFITI

ARTICLE I. IN GENERAL

Sec. 19-1. Definitions in General

The definitions in A.R.S. tit. 13 (A.R.S. § 13-1601 et seq.) shall be applicable to this Chapter unless a term is specifically defined in this Chapter, or unless the context requires otherwise.

Sec. 19-2. Definitions Pertaining to this Chapter

For the purposes of interpretation of this Chapter, the following words and phrases shall mean:

- (a) *Aerosol paint container* - means any aerosol container that is adapted or made for the purposes of applying spray paint or other substances capable of defacing property.
- (b) *Broad-tipped markers* - means any type of marker or similar instrument with a flat or angled writing surface of one-fourth-inch ($\frac{1}{4}$ ") or greater which contains ink or other pigmented liquid that is not water soluble.
- (c) *Discovery* - means that date on which the responsible party had actual knowledge, or should have had actual knowledge, that graffiti existed upon his property.
- (d) *Etching equipment* - means any tool, device, or substance that can be used to make permanent marks on the surface of any property.
- (e) *Graffiti* - means any unauthorized inscription or markings, such as initials, words, figures, designs, symbols, slogans, emblems, or drawings marked, scratched, drawn, written, spray-painted, painted, pasted, etched, sketched or otherwise affixed to or on a sidewalk, wall, fence, building, sign or any other structure or surface.
- (f) *Graffiti implement* - means or includes an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush, paintball gun or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.
- (g) *Minor* - means any person under the age of eighteen (18) years old.
- (h) *Offensive to community standards* - specifically defined as an objective reasonable person standard that consists of verbiage or symbols that demean or denigrate individuals or groups reflective of race, ethnicity, culture, alternate lifestyle or sexual orientation, religious affiliation; or depict obscene or otherwise offensive images.
- (i) *Private property* - means land owned by any person other than the United States or the state of Arizona or any political subdivisions thereof.
- (j) *Property* - means any building, wall, bridge, street sign, fence, streetlight, sidewalk, street, curbing, sewer or water drains, or any other structure whether public or privately owned.

Chapter 19 Graffiti

(k) *Public property* – means any property owned or in the control of the United States or the state of Arizona or any political subdivisions thereof.

(l) *Responsible party* - means property owner, tenant in possession, or other persons responsible for the property.

Secs. 19-3--19-10. Reserved.

ARTICLE II. ACTS PROHIBITED

Sec. 19-11. Graffiti Prohibited

(a) No person shall make graffiti of any type on any building, public or private, or any other property, real or personal, owned by any person, corporation, association, partnership or any public agency or instrumentality without the express written permission of the owner, manager, tenant or other responsible party.

(b) No person shall possess graffiti implements in such a manner as to give rise to an inference of intent to make graffiti; and no person shall possess an aerosol paint container or broad-tipped marker in any public place including any building, park, facility or alley or on any private property where that person has no right to be unless possession is authorized or required as a part of a legitimate business or activity.

(c) No minor may possess graffiti implements on any public or private property without the prior written permission of the responsible party for the property in such a manner as to give rise to an inference of intent to make graffiti.

(d) Any person who violates any provision of this Section shall be guilty of a class one (1) misdemeanor, punishable by (i) a term of not less than one (1) day in jail, (ii) a total fine of not less than five hundred seventy five dollars (\$575.00), including all court and jail surcharges and fees, and (iii) not less than forty (40) hours community service involving participation in the removal of graffiti, or other activities as directed for the purpose of removing refuse or debris and other related activities intended to remove or abate visible blight, damage or nuisance elements from public or private property within the city. In addition to any other punishment, the court shall order restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense, or to any person or entity including a political subdivision that has incurred expense to repair or abate such damage, in an amount to be determined by the court. In the event the defendant charged is a minor, his or her parents or other persons with whom he or she resides or who have custody over such minor shall be likewise cited and shall also be subject to the fines provided herein.

Sec. 19-12. Sale or Transfer of Graffiti Implements; Furnishing to Minors Prohibited

(a) No person may sell, give, loan, or otherwise make available any aerosol paint container or broad-tipped marker to a minor unless that minor is accompanied by a parent or legal guardian at the time of purchase or transfer.

(b) No minor may furnish fraudulent identification of majority age at the time of purchase or transfer of any graffiti implement.

Chapter 19 Graffiti

(c) Every person who operates a commercial retail establishment that sells aerosol paint containers and/or broad-tipped markers must:

(d) Place a sign that is at least fifteen (15) square inches in size at or near the display of such products stating: "*The City of Maricopa is designated as a Graffiti-Free City. Graffiti is against the law. Any person who defaces property with paint, markers, or any other liquid or marking device is guilty of a crime punishable by up to six (6) months imprisonment and/or fines up to \$2,500*" or words to that effect.

(e) Place a sign that is at least fifteen (15) square inches in size in view of persons accepting customer payment for Graffiti Implements stating: "*The City of Maricopa is designated as a Graffiti-Free City. Graffiti is against the law. Selling aerosol paint containers or broad-tipped markers to persons under the age of 18 is a civil offense and punishable by a fine of not less than \$250 and not more than \$1,000*" or words to that effect.

(f) A person who violates any provision of this Section is subject to a civil sanction of not less than two-hundred fifty dollars (\$250.00) and not more than one thousand dollars (\$1,000.00).

Secs. 19-13--19-20. Reserved.

ARTICLE III. REMOVAL OR ABATEMENT

Sec. 19-21. Graffiti as a Nuisance; Removal

(a) The existence of graffiti on public and private property in violation of this Chapter is expressly declared to be a public nuisance, or as deemed applicable, offensive to community standards.

(b) The city does hereby compel the responsible party for public and private property to remove graffiti on the basis that its presence constitutes a hazard to public health and safety.

(c) It shall be unlawful for any responsible party to maintain, permit or allow graffiti to remain on any property where graffiti is visible from any street or other public or private property. The responsible party of any property shall remove or cause to be removed any graffiti on the property within ten (10) calendar days of the discovery of the graffiti. The responsible party may allow the city to remove the graffiti or may remove the graffiti themselves and apply for victim restitution during prosecution.

(d) Graffiti deemed offensive to community standards shall be removed / abated within twenty-four (24) hours of discovery. City personnel may assist with materials and supplies to remove or repair the defacement as part of a graffiti abatement program funded by the city.

(e) Any person convicted of applying graffiti on public or private property may be ordered by the court to either pay for the removal of the graffiti, or personally remove the graffiti by painting over the defaced area, within a specified time. Failure of any person to remove or pay for removal of graffiti constitutes an additional violation of this Chapter. If graffiti is applied by a minor, the parents or legal guardian are also responsible for removal or payment for removal of graffiti.

Chapter 19 Graffiti

(f) The city is authorized to use public funds for graffiti abatement on public or private property. The city is not required to paint, remove, or repair an area more extensive than that covered by graffiti, or use a matching paint. The city at its discretion may provide more extensive painting, removal, or repair if approved by the city manager.

(g) The city or its authorized private contractor is expressly authorized to enter private property and abate graffiti thereon in accordance with this Article.

Sec. 19-22. Notice of Graffiti Abatement

(a) Upon determining that graffiti has been applied to property, whether public or private, within the city limits, the city shall cause a written notice of graffiti abatement to be sent to the responsible party for the property. Notice shall be served by either personal service or certified U.S. mail. If the property is not occupied then notice shall be provided to the owner of record as indicated on the Pinal County tax rolls. The receipt date of the notice shall be the date received if delivered in person or the date sent if by certified mail.

(b) The notice of graffiti abatement shall at a minimum contain the following information:

- (1) Identification of the property and a description of the nature of the graffiti.
- (2) A statement declaring that the property is a public nuisance or that the property is offensive to community standards.
- (3) A statement declaring that abatement must be completed within ten (10) calendar days of receipt of notice regarding graffiti.
- (4) A statement declaring that abatement must be completed within twenty four (24) hours of receipt of notice if the graffiti is deemed to be offensive to community standards.
- (5) A statement declaring that if the responsible party does not abate the graffiti in the time provided in this Article, the city or its private contractor may enter upon the property to abate the nuisance and assess the property owner for the actual costs incurred by the city.
- (6) A statement declaring that neither the city nor its private contractor shall be liable for any abatement of graffiti that does not match or resemble the original surface.
- (7) A good faith estimate of the costs necessary for the city or its private contractor to remove or abate the graffiti.
- (8) A statement that the city shall certify the actual costs incurred by the city or its private contractor to remove or abate the graffiti in its filing of lien with the office of the county recorder.

Sec. 19-23. Abatement by the City

(a) If after ten (10) days from receipt of the notice the responsible party has failed to remove the graffiti, the city may cause the graffiti to be removed and assess the costs of removal against the owner of the real property upon which the building or structure is located.

Chapter 19 Graffiti

(b) Any owner, occupant or lessee who receives written notice of graffiti abatement may file an appeal pursuant to Section 19-25 of this Article for a hearing on either the notice or the amount of the assessment. The appeal must be in writing and acts as a stay of all proceedings until such time as the hearing officer schedules a time, place and date certain for the hearing.

(c) A prior assessment or lien for the purposes provided in this Section shall not be a bar to a subsequent assessment or assessments for such purposes and any number of liens on the same lot or tract of land may be enforced in the same action.

(d) The lien upon real property authorized herein shall be subject and inferior to the lien for general taxes and to all prior recorded mortgages, liens and encumbrances of record. A sale of the property to satisfy a lien obtained under the provisions of the Article shall be made upon judgment of foreclosure and order of sale. The city reserves the right to bring an action to enforce the lien in the Pinal County superior court at any time after the recording of the assessment, but failure to enforce the lien by legal action shall not affect its validity.

(e) In the event that a responsible party would be financially burdened by a graffiti removal order, the responsible party may apply for a determination of hardship. The application shall include a statement as to why the hardship exists and documented proof of the financial hardship. The review of the application and final decision will be determined by the city manager.

Sec. 19-24. Designation of Enforcement Authority

(a) All city police and code enforcement officers are authorized to issue notices of graffiti abatement for violations of this Chapter within the city's jurisdiction.

(b) The director of public safety or designee shall act as the hearing officer for appeals pursuant to Section 19-25 of this Article.

Sec. 19-25. Appeals and Administrative Review

(a) A responsible party may request a hearing before the hearing officer to object to the written notice of graffiti abatement or the amount of the assessment proposed by the city to abate or remove the graffiti by filing a request with the hearing officer within three (3) business days of receiving the notice.

(b) The hearing officer shall hold a hearing and render a determination on the appeal and notify the appellant and the enforcement authority within five (5) business days of receiving notice of appeal from the responsible party.

(c) If the hearing officer determines that the property contains graffiti and is a public nuisance, the hearing officer will issue a written eradication order stating that the city, or its authorized private contractor, may enter upon the property within six (6) business days and abate the graffiti.

(d) If the responsible party disagrees with the determination of the hearing officer, they may appeal for a second determination by the city manager within three (3) business days of receiving notice of the hearing officer's determination. The determination of the city manager shall be issued within five (5) business days of receiving the notice of appeal and shall be final.

Chapter 19 Graffiti

Secs. 19-26--19-40. Reserved.

ARTICLE IV. GRAFFITI ABATEMENT FUNDS

Sec. 19-41. Graffiti Prevention and Rewards Fund

The council is authorized to create a fund in which a portion of the penalties collected from violators of this Chapter shall be deposited and utilized for the purposes of:

- (a) Creating an anti-graffiti educational program.
- (b) Funding the costs of graffiti abatement and removal within the city's jurisdiction.
- (c) Paying rewards of up to \$ 500 for information leading to the arrest of persons responsible for the application of graffiti within the city's jurisdiction.
- (d) Such fund shall be administered by the city manager.
- (e) The city may solicit private donations to supplement the fund herein created.

Secs. 19-42--19-60. Reserved.