

Chapter 21 GRAFFITI

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**Sec. 21-1. Purpose and intent.**

- (a) The purpose of this chapter is to provide a program for abatement of graffiti from public and private property; to reduce blight and deterioration within the Community, to expedite removal of graffiti from structures on both public and private property; and to prevent the further spread of graffiti.
- (b) Graffiti, on both public and private property, is creating a condition within the Community which results in blight and deterioration of property and an impairment of comfortable enjoyment of life and property for adjacent and surrounding residents and contributes to the overall detriment of the Community.
- (c) Graffiti constitutes a public nuisance and a threat to public safety which must be abated to alleviate the detrimental impact of such graffiti on the Community.
- (d) Certain types of graffiti which incite violence, are especially harmful and must be removed as quickly as possible to avoid or minimize harm to persons and the whole Community in general.

(Code 1981, § 21-1; Code 2012, § 21-1; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-402-2012, § 21-1, 5-30-2012)

**Sec. 21-2. Definitions.**

For the purposes of this chapter, the following words and terms shall have the meanings herein ascribed to them:

*Abatement* means removal of graffiti where costs are incurred.

*Adult* means any person who is 18 years or older, their age of majority.

*Aerosol paint container* means any aerosol container which is adapted or made for the purpose of spraying on paint.

*Broad tip marker* means any marker or similar implement which has a writing surface which is one-half of an inch or greater and containing anything other than a solution which can be removed with water after the solution dries.

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*Graffiti* means a drawing or inscribing of a message, slogan, sign, symbol or mark of any type that is made on any public or private building, structure or surface, and that is made without permission of the owner or legal occupant.

*Graffiti implement* means an aerosol paint container, or paint tips adaptable to aerosol paint containers, broad tip marker, paint stick, graffiti stick or bleeder.

*Juvenile* means any person under the age of 18 years of age.

*Paint stick, graffiti stick or bleeder* means an implement containing paint, wax, epoxy or other similar substance.

*Responsible party* means an owner, occupant, lessor, lessee, manager, licensee or other person having the right to control such property.

*Restitution* means financial or other reimbursement to the party actually responsible for abating the graffiti and necessary to repair or restore the property to the condition it was before the graffiti occurred.

(Code 1981, § 21-2; Code 2012, § 21-2; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-402-2012, § 21-2, 5-30-2012)

#### **Sec. 21-3. Graffiti prohibited.**

(a) *Offenses.*

- (1) All sidewalks, walls, buildings, fences, signs and other structures or surfaces shall be kept free from graffiti when the graffiti is visible from the street or other public or private property.
- (2) Any person who knowingly places or causes to be placed, graffiti as described in subsection (a)(1) of this section shall be guilty of an offense.
- (3) Any person who knowingly entices or induces others to engage in graffiti as described in subsection (a)(1) of this section shall be guilty of an offense.

(b) *Persons hiring, etc., for committing offense.* Any person who hires, engages or uses a minor for any conduct preparatory to or in completion of any offense in this section shall be guilty of an offense.

(c) *Penalties.*

- (1) *First offense.* Any person convicted of an offense defined in this section shall be sentenced to imprisonment for a period of not less than three days or more than ten days and to a fine not to exceed \$500.00 or both, with costs. Imprisonment may be commuted to supervised Community service.
- (2) *Second and subsequent offenses.* Any person convicted of a second or subsequent offense under this section shall be imprisoned for a period of not less than 20 days nor more than one year and fined an amount of not less than \$500.00 nor more than \$1,000.00 or both, with costs. There shall be no commutation of sentence.

(Code 1981, § 21-3; Code 2012, § 21-3; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-402-2012, § 21-3, 5-30-2012)

#### **Sec. 21-4. Possession of graffiti implements prohibited.**

- (a) No person shall knowingly possess any graffiti implement with the intent to use the implement for the purpose of committing a violation of this chapter.

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- (b) Violation of this section is punishable by a term of 24 hours in jail for a first offense and restitution for labor and supplies needed to abate the graffiti for which charges were filed and not less than 20 hours of Community service aimed at abating graffiti within the Community.
- (c) Conviction of a second and subsequent offense of illegal possession of graffiti implements shall be punishable by a term of imprisonment for not less than 72 hours and shall be fined not less than \$300.00 or more than \$1,000.00 and not less than 40 hours nor more than 80 hours of Community service aimed at abating graffiti within the Community. Additionally, restitution shall be ordered for labor and supplies used to abate the property.

(Code 1981, § 21-4; Code 2012, § 21-4; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-402-2012, § 21-4, 5-30-2012)

#### **Sec. 21-5. Limiting access to graffiti implements.**

- (a) No person other than a parent or legal guardian shall sell, exchange, give, loan or otherwise furnish, or cause to be furnished, any graffiti-type implement to any person under the age of 18 years.
- (b) Evidence that a person, his or her employee, or agent demanded and was shown acceptable evidence of majority age and acted upon such evidence in a transaction or sale shall be a defense to any prosecution under this section. Acceptable evidence of majority age shall include, but is not limited to: a tribal identification card, a valid driver's license or state identification or military identification.
- (c) This section does not apply to the transfer of graffiti implements from parent to child, guardian to ward, employer to employee, teacher to student or in any other similar relationship when such transfer is for educational or other lawful purpose.
- (d) Any person found in violation of this section shall be subject to a fine of not less than \$100.00 nor more than \$300.00 for a first offense and not less than \$300.00 nor more than \$750.00 for a second and subsequent offense.

(Code 1981, § 21-5; Code 2012, § 21-5; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-402-2012, § 21-5, 5-30-2012)

#### **Sec. 21-6. Storage and display of graffiti implements.**

- (a) No person who owns, conducts, operates or manages a business where aerosol paint containers or broad tip markers are sold, nor any person who sells or offers for sale aerosol paint containers or broad-tipped markers, shall store or display, or cause to be stored or displayed, such aerosol spray paint containers and broad tip markers in an area that is accessible to the public without employee assistance in the regular course of business pending legal sale or other disposition.
- (b) Nothing herein shall preclude the storage or display of aerosol paint containers and broad tip markers in an area viewable by the public so long as such items are not accessible to the public without employee assistance.
- (c) Violation of this section is a civil offense, subject to a fine of not less than \$500.00 for a first offense and not less than \$1,000.00 for a subsequent offense.

(Code 1981, § 21-6; Code 2012, § 21-6; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-402-2012, § 21-6, 5-30-2012)

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**Sec. 21-7. Graffiti abatement.**

- (a) *Notice of violation and duty to remove.* If it is determined by the public works department that graffiti exists on property in violation of this section, the public works department of the Community shall, in writing, notify the responsible party with a notice of violation, informing the party of the duty to remove the graffiti.
- (b) *Contents of notice of violation.*
  - (1) The notice of violation shall:
    - a. Identify the property in violation;
    - b. Generally describe the location;
    - c. Direct that the graffiti be removed within 15 days of receipt of notice; and
    - d. State that if the responsible party fails to remove the graffiti within the specified time period, the Community public works department shall remove the graffiti and may bill the responsible party for the costs.
  - (2) The notice shall also state that the responsible party may appeal the notice by filing a written notice of appeal with the Community manager within the same time period given to remove the graffiti. The effective date of the notice of violation shall be the date received if delivered in person or sent by certified mail, or the date of first publication, if service by publication is used.
- (c) *Service of notice.* The notice may be served by certified mail, personal service, or by posting copies of the notice at the subject property and prominently within the Community, including at a minimum, the court lobby, the IHS health clinic, the administration building, the Lehi Community Center and the Community bulletin board located at the southeast corner of Longmore and Osborn Roads.
- (d) *Filing of appeals.* As an administrative matter, initial appeals shall be made to and decided by the Community manager. The final appellate body shall be the trial court of the Community court.
  - (1) All administrative appeals shall be filed with the Community manager in the manner described in this subsection (d).
  - (2) A person has a right to appeal the decision of the Community manager to the trial court of the Community court within five working days of the Community manager's final decision. The appeal shall be in writing and shall include a copy of the final decision of the Community manager, a general statement of the nature of the appeal, and the relief sought. A copy shall be sent to the director of public works.
    - a. The trial court may determine the matter based upon the documents submitted, or may conduct a hearing on the matter.
    - b. All hearings shall be informal.
    - c. The decision of the trial court shall be in writing and shall be final. No further appeals shall be allowed.
- (e) *Community's authority to abate.*
  - (1) If the responsible party fails to abate the graffiti as required by the notice of violation, the Community public works department may proceed to abate the graffiti, and shall bill the responsible party for costs incurred. The Community or its authorized representative is expressly authorized to enter private property and abate graffiti thereon in accordance with this section. The Community police department shall assist in the enforcement of this chapter.
  - (2) If the party notifies the department of public works of its willingness to abate the graffiti, but lacks the financial means to do so, the department of public works, with the prior approval of the Community manager, may make the materials available to the party at no cost, or a limited cost.

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(Code 1981, § 21-7; Code 2012, § 21-7; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-402-2012, § 21-7, 5-30-2012)

**Sec. 21-8. Sentencing.**

- (a) *Mandatory sentencing.* Unless otherwise stated in this section, any person convicted of an offense defined in this section shall not be eligible for suspension of sentence, probation, parole or any other release from custody until the sentence imposed by the court is served in its entirety. Mandatory sentencing shall apply to juveniles in accordance with chapter 11.
- (b) *Payment of fines and restitution.* The court may demand restitution and/or fines to be paid from any minor or adult's trust account.

(Code 1981, § 21-8; Code 2012, § 21-8; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-402-2012, § 21-8, 5-30-2012)

**Sec. 21-9. Civil sanctions.**

- (a) *Removal and exclusion from the Community.* Whenever a nonmember is involved in violating any section of this chapter, proceedings for removal and exclusion of the nonmember from the Community may be initiated in accordance with chapter 7.
- (b) *Civil fines.* A person found to be in violation of any section of this chapter may be liable for civil fines pursuant to section 21-6.

(Code 1981, § 21-9; Code 2012, § 21-9; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-402-2012, § 21-9, 5-30-2012)

**Sec. 21-10. Appellate review.**

- (a) *Appeals.*
  - (1) Appeals of administrative actions as set forth in section 21-7(d) regarding abatement shall be made first to the Community manager and then to the trial court of the Community court. All decisions of the trial court shall be final.
  - (2) Appeals of civil or criminal violations shall be made in accordance with article II of chapter 4.
- (b) *Stay of execution of sentence.* Execution of sentences under this chapter shall be stayed in accordance within accordance with chapter 4.

(Code 1981, § 21-10; Code 2012, § 21-10; Ord. No. SRO-256-2000, 10-6-1999; Ord. No. SRO-416-2013, 3-1-2013; Ord. No. SRO-402-2012, § 21-10, 5-30-2012)