

ANNOTATED AND PROPOSED CHANGES

TITLE 9. - PROHIBITED ACTIVITIES

CHAPTER 9-4. - PROHIBITED ACTIVITIES

ARTICLE 3. - OFFENSES RELATING TO PROPERTY

§ 9-4-43 GRAFFITI PROHIBITED.

(A) In ~~this~~ Sections 9-4-43 through 9-4-45: Definitions.

- (1) DIRECTOR means the head of the department designated by the city manager to enforce and administer this section.
 - (2) GRAFFITI means any a mark, including an unauthorized inscription, word, letter, slogan, drawing, painting, tagging, signature, symbol, logo, name, character, or figure, design, or other marking which is etched, written, painted, drawn, or made in any other manner, whether temporary or permanent, on any building, structure, fixture, or other improvement whether public or private, without the consent of the owner, and which is visible from public property, public right-of-way, or other private property, on public or private property visible to the public, excluding commercial advertising or a mark placed in compliance with an ordinance, or state or federal law.
 - (3) MINOR means a person under 17 years of age.
 - (4) OWNER means the owner of record or the owner's authorized agent ~~person contractually responsible for property.~~
 - (5) PARENT means a person who is the natural or adoptive parent of a minor, including a court-appointed guardian, conservator, or other person 21 years of age or older, authorized by a parent, court order, or court-appointed guardian to have the care and custody of a minor.
 - (6) TRANSPORTATION INFRASTRUCTURE refers to the physical systems, facilities, and structures that support the movement of people and goods from one location to another. It includes both public and private assets designed to facilitate various modes of transportation, such as: roadways, rail systems, airports and aviation facilities, maritime and waterways, and public transit systems.
- (B) An owner commits an offense if the owner, after receiving notice from the director in accordance with Section 9-4-44, fails to cover or remove graffiti on the owner's property when the graffiti is visible from public property, public

right-of-way, or other private property within the time allowed by this article unless otherwise exempted. Before prosecuting an offense for a for a violation under Subsection (C), the director shall:

- ~~(1) give the owner written notice to remove the graffiti from the property not later than the 30th day after the date the notice is delivered; and~~
- ~~(2) shall review the defenses to prosecution under Subsection (G) to determine if a defense is applicable.~~

(C) A parent commits an offense if the parent permits, or by insufficient control, allows a minor to create graffiti on public or private property. An owner commits an offense if the owner fails to cover or remove graffiti on the owner's property visible from public property or right-of-way, or other private property.

(D) It is a defense to prosecution under this section that:

- (1) the director failed to serve notice on the owner in compliance with Section 9-4-44;
- (2) during the 12 months before a citation under this section, the property owner received notice and removed graffiti from the property not less than three times;
- (3) the owner has made a good faith effort to remove the graffiti, including obtaining an insurance policy;
- (4) the owner approved the creation and placement of the graffiti; or
- (5) the graffiti is located on transportation infrastructure and removal of the graffiti would create a hazard for the person performing the removal.

Now in
Subsection
(C) above.

~~A parent commits an offense if the parent knowingly permits, or by insufficient control allows, a minor to create graffiti on public or private property.~~

(E) An offense under this section is a Class C misdemeanor punishable as provided in Section 1-1-99 (Offenses; General Penalty). The 30-day period prescribed in Subsection (B)(1) begins:

- ~~(1) the day the notice is personally served on the owner;~~
- ~~(2) the day after the notice is mailed by certified mail; or~~
- ~~(3) the day after completion of an alternative method of notice under Subsection (F).~~

- (F) A culpable mental state is not required, and need not be proved, for an offense under this section. Notice under Subsection (B) may be served by personal delivery or certified mail, return receipt requested, addressed to the owner at the owner's address shown on the tax rolls. If the owner's address is unavailable or the notice is returned as undeliverable, the director may issue notice by:

Notice provision now in newly created Section 9-4-44.

- ~~(1) — publication two times within ten consecutive days in a newspaper of general circulation in the city;~~
- ~~(2) — posting the notice on or near the front door of each building on the property; or~~
- ~~(3) — posting the notice on a sign staked to the ground on the property if there is no building on the property.~~

- (G) The director may delegate authority for administering and enforcing this section. It is a defense to prosecution under this section that:

- ~~(1) the director failed to serve notice on the owner in compliance with this section;~~
- ~~(2) during the 12 months before a citation under this section, the property owner received notice and removed graffiti from the property not less than three times;~~
- ~~(3) before the director filed a complaint, the owner gave the director written authorization to enter the property to cover or remove the graffiti at no cost to the owner under to a program approved by the director;~~
- ~~(4) the owner has made a good faith effort to remove the graffiti, including obtaining an insurance policy; or~~
- ~~(5) the owner and director approved placement of the graffiti.~~

Defenses to prosecution now in Subsection (D) above.

- (H) ~~If the director denies an owner's request to approve placement of graffiti on property, the owner may appeal to the city manager.~~

§ 9-4-44 GRAFFITI; NOTICE.

Notice to remove graffiti may be served by personal delivery or certified mail, return receipt requested, addressed to the owner at the owner's address as contained in the records of the appraisal district in which the property is located. If personal delivery cannot be obtained, the owner's address is unavailable, or the notice is returned as undeliverable, the director may issue notice by:

- (1) publication at least once in a newspaper of general circulation in the city;
- (2) posting the notice on or near the front door of each building on the property; or
- (3) posting the notice on a sign staked to the ground on the property if there is no building on the property.

§ 9-4-45 REMOVAL OF GRAFFITI.

(A) Before prosecuting an offense for a violation under Section 9-4-43(B) or taking action to abate the graffiti under this section, the director must offer to remove the graffiti from the owner's property free of charge, and the owner must refuse the offer. An owner refuses the offer to remove graffiti by either:

- (1) providing a written refusal of the offer to the director; or
- (2) failing to respond to the offer within five business days after the date on which the owner is deemed to have received notice of the offer.

(B) An owner must remove graffiti from the owner's property on or before the 15th day after the date the owner receives notice under Section 9-4-44. If the owner fails to remove the graffiti on or before the 15th day after the date of receipt of the notice, the City may remove the graffiti.

(C) If the owner fails to remove the graffiti, the City may assess its expenses against the owner or against the property in accordance with state law.

(D) An owner may avoid expenses or a lien assessment by establishing a defense listed under Section 9-4-43(D).

- (E) When the City removes graffiti from private property free of charge, the director may use latex paint materials that are environmentally friendly that may not match the existing background surface color. These paint materials will be used to paint over the graffiti and no other part of the property. The director will not power wash the property marked by graffiti.