



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Kathie G. Brooks, Interim City Manager

DATE: March 13, 2013

SUBJECT: **REFERRAL TO THE NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE OF A DISCUSSION REGARDING POSSIBLE AMENDMENTS TO CHAPTER 70 ARTICLE III (SECTION 70-122-129), "GRAFFITI ORDINANCE".**

ADMINISTRATION RECOMMENDATION

Refer the item to the Neighborhood/Community Affairs Committee for discussion.

BACKGROUND

Graffiti on private or public property is currently within the purview of Chapter 70 Article III. "Graffiti" (Section 70-122-129). This section also provides for fines and penalties for violators, as well as requirements for the abatement of graffiti by private property owners.

It is the City's responsibility to remove graffiti from public property. Under the current ordinance, the City can, upon the failure of the private property owner to abate the graffiti, enter the private property to address the nuisance. The private property owner is then billed for the expense associated with the abatement, and is provided an opportunity to appeal the costs billed for the abatement. This appeal is heard by the Special Master.

Currently, Commercial property owners must take corrective action within seven (7) business days from the receipt or delivery of a notice requiring corrective action; residential property owners must take corrective action within ten (10) business days from receipt or delivery of the notice. The Code Compliance Division issues notices to private property owners. Since the abatement period begins after there has been notice, graffiti may be on the property for an extended period of time.

Administration's goal is to decrease the time graffiti is left unabated by adopting aspects of the Miami-Dade County Code (Sec. 21-30.01) to possibly include:

- Authorizing City staff to immediately remove or obscure graffiti that abuts the public right-of-way.
- Defining "property that abuts the public right-of-way" as property that can be accessed by City staff without substantially encroaching onto private property.
- Noticing property owners of the City's intention to immediately obscure graffiti

placed on walls, buildings and other surfaces that abut the public right-of-way.

- Establish that the appearance of graffiti on a wall, building or other surface abutting the public right-of-way shall serve as notice to the property owner that the graffiti is subject to being obscured or removed by the City.

CONCLUSION

The Administration recommends that the Mayor and the City Commission refer the matter to the Neighborhood/Community Affairs Committee for consideration and recommendation.

Attachments

- Attachment A – Miami-Dade County Graffiti Ordinance
- Attachment B – City of Miami Beach Ordinance


KGB/JGG/SS/HC/RSA

Sec. 21-30.01. - Graffiti.

- (a) *Definitions.* For the purpose of this section, the following terms apply.
- (1) "*Broad tipped indelible marker*" means any felt tip marker, or similar implement, which contains a fluid which is not water soluble and which has a flat or angled writing surface one-half (½) inch or greater.
 - (2) "*Bona fide evidence of majority*" means a document issued by a federal, state, county, or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.
 - (3) "*Business day*" means any day of the week except Saturday, Sunday, or legal holidays.
 - (4) "*Commercial property*" means real and personal property that is used for business, commercial, or for-profit purposes including but not limited to vehicles, dumpsters, advertisements and signs. It shall be prima facie evidence that a property is commercial if it (1) is located in a business, commercial, office, apartment, hotel or warehouse zoning district; (2) contains commercial or business advertising visible from the right-of-way; or (3) has posted on its premise a business occupational license. "Commercial property" shall include advertising and billboards. "Commercial property" shall include residential property of four (4) or more units that is rented or advertised for rent. "Commercial property" shall not include (1) single family homes or residential property of three (3) or less units; (2) property owned by governments; (3) property used for non-profit purposes by educational institutions, charities, or religious institutions; (4) property used for agricultural purposes except for those portions of the property containing a business open to the general public.
 - (5) "*Corrective action*" mean an act required to remove or effectively obscure graffiti that is visible from the right-of-way.
 - (6) "*Director*" mean the Director of the Public Works Department or his or her designee.
 - (7) "*Non-commercial property*" means all property that is not included in the definition of commercial property in this section.
 - (8) "*Owner*" means any and all persons with legal and/or equitable title to real property in Miami-Dade County as their names and addresses are shown upon the records of the Property Appraiser Department.
 - (9) "*Supervising adult*" means an individual twenty-one (21) years of age or older who has been given responsibility by the minor's parents, legal guardian, or other lawful authority to supervise the minor.
 - (10) "*Used or intended to be used*" includes usage in the course of a violation or usage to transport a violator to or from the scene of a violation.
- (b) *Application of section.*
- (1) This section shall be applicable in incorporated and unincorporated areas of Miami-Dade County, with the enforcement of the provision of this section in the unincorporated area being the responsibility of Miami-Dade County and in the incorporated area being the responsibility of the municipalities.
- (c)

Affect on municipal ordinances. It is the intent of the Board to provide a minimum standard for those graffiti offenses provided in subsections (f), (h), and (i) in incorporated areas of Miami-Dade County. Any municipality in Miami-Dade County may adopt more stringent graffiti regulations and/or higher penalties for graffiti offenses than those provided herein.

(d) *Graffiti prohibited.*

- (1) No person shall write, paint, or draw any inscription, figure, or mark of any type on any public or private building or structure or other real or personal property, owned, operated, or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm, or corporation, unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained and filed with the Public Works Department, Graffiti Coordinator. No filing is required if the owner, owner's agent, manager or operator of the property has obtained a valid painting permit in accordance with other pertinent law.
- (2) Any person violating this subsection shall be punished by a fine of two hundred and fifty dollars (\$250.00) for the first offense; five hundred dollars (\$500.00) for the second offense and one thousand dollars (\$1,000.00) for each subsequent offense or by imprisonment in the County jail for a term not to exceed sixty (60) days or by both fine and imprisonment at the discretion of the court.
 - (I) In the case of a minor, the parents or legal guardian shall be jointly and severably liable with the minor for payment of all fines.
 - (II) Failure of the parents or legal guardian to make payment, will result in the filing of a lien on the parents or legal guardian's property to include the fine and administrative costs.
 - (III) Upon an application and finding of indigency, the court may decline to order fines against the minor or parents.
- (3) In addition to any punishment listed in subsection (d)(2), the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the defendant's offense in the amount or manner determined by the court.
 - (I) In the case of a minor, the parents or legal guardian shall be ordered jointly and severably liable with the minor to make such restitution.
- (4) In addition to any punishment listed in subsection (d)(2) or restitution ordered under subsection (d)(3), the court shall order any violator to perform monitored community service in the removal of graffiti of not less than forty (40) hours and not more than one hundred (100) hours.
- (5) Forfeiture of personal property. All personal property, including, but not limited to automobiles and bicycles, used or intended to be used in violating this subsection, shall be forfeitable to Miami-Dade County. In forfeiting such personal property, the County shall follow the procedures outlined in Section 31-116 et seq. of the Miami-Dade County Code concerning forfeitures of passenger motor vehicles for violation of the transportation code, except that one (1) violation of this subsection shall be the basis for forfeiture; the County Manager or his designee shall act as the party for the County in lieu of CSD as recipient of all request for hearings and for all other purposes under the procedure; the property subject to forfeiture shall be personal property as described above. In any forfeiture under this section, the court shall not order a forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by Florida and Federal Constitution.
 - (I)

Municipalities may establish their own system for the forfeiture of personal property.

(e) *Graffiti removal by the County.*

- (1) Whenever the County becomes aware of the existence of graffiti on any property, including any structure or improvement, that abuts the public right-of-way within any unincorporated area of the County, County personnel are authorized to immediately remove or obscure such graffiti.
- (2) For purposes of this subsection (e) only, "property that abuts the public right-of-way" means property that can be accessed by County personnel without substantially encroaching onto private property, such as subdivision walls and other structures and improvements lying at or near the public right-of-way.
- (3) General notice. Property owners are hereby put on notice of the County's intention to immediately obscure graffiti placed on walls, buildings and other surfaces that abut the public right-of-way. Team Metro shall also publish notice once during each week for four (4) consecutive weeks in the Miami Herald and shall substantially comply with Chapter 50, Florida Statutes. Any property owner who objects to graffiti being obscured on property abutting the public right-of-way shall file a statement of objection with the County Manager or his designee within thirty (30) days of the date of the final published notice. Such objection shall be effective for one (1) year. A new objection must be filed each year thereafter to preserve the objection. If an objection is filed, subsection (e) shall not apply to the property owner's property. The County reserves the right, however, to ensure that graffiti is obscured on such property by citation and fine under subsection (g).
- (4) Specific notice to affected property owner. The appearance of graffiti on a wall, building or other surface abutting the public right-of-way shall serve as notice to the property owner that the graffiti is subject to being obscured or removed by the County. Any property owner who has not filed a statement under subsection (3) and who desires to obscure or remove the graffiti himself shall (i) immediately remove the graffiti; or (ii) notify the County Manager or his designee immediately of his intention to remove the graffiti within forty-eight (48) hours. Graffiti not removed within forty-eight (48) hours is subject to removal by the County.
- (5) Nothing contained in this subsection (e) shall be construed to supersede or otherwise affect the provisions contained in subsection (g).

(f) *Graffiti removal by the property owner.*

- (1) Whenever the County becomes aware of the existence of graffiti visible from the public right-of-way on any property, real or personal, including structures or improvements within the County, a Code Enforcement Officer is authorized, upon such discovery, to give, or cause to be given, notice to take corrective action to the property owner or the property owner's agent or manager.
- (2) For commercial property, the property owner or the property owner's agent or manager shall take corrective action within two (2) business days from receipt or posting of the notice listed in subsection (f)(1). For non-commercial property, the property owner or the property owner's agent or manager shall take corrective action within fourteen (14) calendar days from receipt or posting of the notice listed in subsection (f)(1).
- (3) If the property owner or the property owner's agent or manager fails to take corrective action, he or she shall be cited pursuant to Chapter 8CC of this Code or by any municipal citation system.

- (I) For commercial property, the property owner or the property owner's agent or manager has two (2) business days from receipt or posting of the citation to file for an appeal hearing before an 8CC hearing officer, or municipal hearing officer, or take corrective action. For non-commercial property, the property owner or the property owner's agent or manager has seven (7) calendar days from receipt or posting of the citation to file for an appeal hearing before an 8CC Hearing Officer, or municipal hearing officer, or take corrective action.
 - (II) If the owner or the property owner's agent or manager does not appeal the citation, they shall pay the fine in accordance with Section 8CC-10 of the Code, or in accordance with the applicable municipal citation system. Thereafter, each day the owner, or property owner's agent or manager fails to take corrective action counts as a continuing violation.
- (4) The above listed hearing shall be conducted not sooner than five (5) calendar days, but not later than twenty (20) calendar days after receipt of the appeal.
- (5) Notwithstanding any provision of this Chapter or Chapter 8CC of the Miami-Dade County Code to the contrary, the appeal of a violation of this section shall not extend or otherwise change the time period for corrective action of the violation. Continuing penalties as provided for herein and in Section 8CC-4(c) shall accrue upon the expiration of the time period provided in subsection (3) above.
- (6) The Director, or City Manager of a municipality, shall cause corrective action to take place at the owner's expense after two (2) business days for commercial property, or fourteen (14) calendar days for non-commercial property from the date of citation or date of the rendering of the Hearing Officer's order, which finds the violator guilty.
 - (I) The County or municipality shall have the right to enter upon private property to the extent necessary to take corrective action. Entry into any dwelling or structure is expressly prohibited.
 - (II) After taking corrective action, the Director, or City Manager of a municipality, shall file a lien in the amount of all expenses incurred in correcting the condition, including all fines, continuing penalties and actual administrative costs.
 - (III) Such liens shall be enforceable in the same manner as a tax lien and may be satisfied at any time by payment thereof, including accrued interest. Upon such payment, the Clerk of the Circuit Court shall, by appropriate means, evidence the satisfaction and cancellation of such lien upon the record thereof. Notice of such lien may be filed in the Office of the Clerk of the Circuit Court and recorded among the public records of Miami-Dade County, Florida.
- (7) It shall be an affirmative defense preventing any fines from issuing under this section if the property owner proves at a hearing that, at the subject location, he or she had been victimized by graffiti three (3) or more times within the calendar year of the violation and had removed or effectively obscured the graffiti within two (2) business days of its appearance for commercial property, or within fourteen (14) days of its appearance for non-commercial property, or within the times provided in this ordinance if a notice or violation was issued. This mitigation provision applies only to fines and shall not prevent the Director, pursuant to section (d)(6), from taking corrective action and liening the property for costs, if the property owner fails to take corrective action.
- (g) *Possession of spray paint and markers.*
 - (1)

- Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint can or broad-tipped indelible marker with the intent to violate the provisions of subsection (d)(1).
- (2) Possession of spray paint and markers by minors on public property prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any public property, highway, street, alley or way except in the company of a supervising adult.
 - (3) Possession of spray paint and markers by minors on private property prohibited without consent of owner. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent, or manager, or person in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession while on his or her property.
 - (4) Any person violating this subsection (g)(1), (2) or (3) shall be punished by a fine of two hundred and fifty dollars (\$250.00) for a first offense, and five hundred dollars (\$500.00) for a second offense and one thousand dollars (\$1,000.00) for each subsequent offense, or by imprisonment in the County Jail for a term not to exceed sixty (60) days, or by both fine and imprisonment in the discretion of the court.
 - (I) In the case of a minor, the parents or legal guardian shall be responsible for payment of all fines.
 - (II) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents or legal guardian's property to include the fine and administrative costs.
 - (5) In addition to any punishment, the court shall order any person found in violation of subsection (g)(1), (2) or (3) to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court.
 - (I) Where the defendant is a minor, the parent or legal guardian shall be jointly and severably liable with the minor to make such restitution.
 - (6) In addition to any punishment listed in subsection (g)(5) or restitution ordered under subsection (g)(6), the court shall order any person found in violation of subsection (g) (1), (2), or (3) to perform monitored community service in the removal of graffiti of not less than forty (40) hours and not more than one hundred (100) hours.
- (h) *Storage and sale of spray paint and markers.*
- (1) *Sale to minors prohibited.* No person or firm shall sell or cause to be sold to any person under the age of eighteen (18) years, and no person under the age of eighteen (18) years shall buy any aerosol container of spray paint or broad-tipped indelible markers. Evidence that a person, his or her employee, or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution thereof.
 - (2) *Display or spray paint and markers.* Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers shall:
 - (I) Place a sign in clear public view at or near the display of such products stating: "GRAFFITI IS A CRIME. ANY PERSON DEFACTING REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WITH PAINT OR ANY OTHER LIQUID

OR DEVICE IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO 60 DAYS AND/OR A FINE UP TO \$1,000.00."

- (II) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers.

"IT IS A VIOLATION OF THE LAW TO SELL AEROSOL CONTAINERS OF SPRAY PAINT OR BROAD-TIPPED INDELIBLE MARKERS TO PERSONS UNDER 18 YEARS OF AGE PUNISHABLE BY A CIVIL FINE OF \$100.00."

- (III) Store or cause such aerosol containers or marker pens to be stored either (a) in the direct line of sight from the cash-register work station or any other work station that is normally continuously occupied while the store is open, or (b) in a place not accessible to the public in the regular course of business without employee assistance, pending legal sale or disposition of such marker pens or paint containers.

- (3) Violation of subsection (h)(1) or (2) shall result in a civil penalty of one hundred dollars (\$100.00) for a first offense and two hundred dollars (\$200.00) for subsequent offenses. When three (3) violations of subsection (h)(1) or (2) occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers for a period up to two (2) years. Violation of such injunction shall be punished by a fine of one hundred dollars (\$100.00) per day of violation in addition to any other penalties levied by the Court. Failure to make payment of fines will be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tip indelible markers until payment of the fine, attorney's fees and costs.

(i) *Anti-graffiti trust fund.*

- (1) There is hereby created the Miami-Dade County Anti-Graffiti Trust Fund. Civil and criminal penalties assessed against violators of this section shall be placed in the fund. The Board of County Commissioners shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of removal of graffiti, the payment, at the discretion of the County Manager, or rewards for information leading to the arrest, taking into custody, adjudication, referral to pre-trial programs or conviction for violation of this section or other state laws relating to graffiti, the costs of administering this ordinance, and such other public purposes as may be approved by the Miami-Dade County Commission by resolution.
- (2) Each jurisdiction that enforces the provisions of this section shall have the right to create its own anti-graffiti trust fund to fund anti-graffiti measures.

(Ord. No. 94-199, § 2, 11-1-94; Ord. No. 94-239, § 1, 12-20-94; Ord. No. 96-133, § 1, 9-10-96; Ord. No. 97-25, § 2, 4-8-97; Ord. No. 97-31, § 1, 4-15-97; Ord. No. 98-33, §§ 1, 2, 2-19-98; Ord. No. 09-88, § 1, 10-6-09)

Editor's note—

Ord. No. 94-199, § 1, adopted Nov. 1, 1994, repealed former § 21-30.01, relative to graffiti, and § 2 of said ordinance enacted a new § 21-30.01 to read as herein set out. The provisions of former § 21-30.01 derived from Ord. No. 88-113, § 1, adopted Dec. 6, 1988; Ord. No. 91-40, § 1, adopted April 2, 1991; Ord. No. 93-115, § 1, adopted Nov. 3, 1993; Ord. No. 94-46, § 2, adopted March 17, 1994.

Miami Beach, Florida, Code of Ordinances >> Subpart A - GENERAL ORDINANCES >> Chapter 70 - MISCELLANEOUS OFFENSES >> ARTICLE III. - GRAFFITI >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Sec. 70-121. - Graffiti declared a nuisance.

The creating or maintaining of the unauthorized application of paint, ink, chalk, dye, felt tip or indelible marker, or any nonwater soluble substance, or the applying or affixing of other inscribed or engraved materials, including posters, placards, and flyers of any size and type, on public or private structures located on publicly or privately owned real property in the city is hereby declared to be nuisance.

(Ord. No. 2009-3640, § 1, 5-13-09)

Sec. 70-122. - Definitions.

Unless it is apparent from the context that another meaning is intended, the following, when used in this article, shall have the meanings attributed to them by this section:

Abatement means the repair, rehabilitation, demolition or removal of a public nuisance.

Broad-tipped indelible marker means any indelible marker that is capable of leaving a mark that is not water soluble and which has a flat or angled writing surface one-half-inch or greater.

City's agent means an independent contractor performing graffiti abatement for the city.

Code compliance officer means any designated employee or person hired by the city acting as an agent of the city whose duty it is, or who is authorized, to enforce codes and ordinances enacted or adopted by the city.

Commercial property means property that is used for business, commercial, or for-profit purposes. It shall be prima facie evidence that a property is commercial if it is located in a business, commercial, office, apartment, hotel or industrial zoning district. "Commercial property" shall include nonpermanent structures such as trailers, dumpsters, traffic signs, barricades, utility poles, traffic signal boxes, and construction equipment. "Commercial property" shall not include:

- (1) Single-family homes or residential property of three or less units;
- (2) Property owned by governments;
- (3) Property used for nonprofit purposes by educational institutions, charities, or religious institutions.

Corrective action means an act required to remove or effectively obscure graffiti that is visible from the right-of-way.

Director means the director of the department designated by the city manager to enforce and administer this article or the director's designated representative.

Etching means the application of graffiti by using a hard or sharp object or etching acid on glass or on any other type of natural or human-made material or surface.

Etching acid means any liquid, substance, or chemical capable of etching, corroding, destroying, or leaving a permanent mark on any natural or human-made surface or material.

Graffiti means the unauthorized application or inscription of any word, figure, graphic design, marking, or defacement that is applied by etching or paint, ink, chalk, dye, broad-tipped indelible marker, crayon or any nonwater soluble substance, or by any graffiti implement, or by applying or affixing inscribed or engraved materials, including posters, placards and flyers of any size and type on public or private property, structures, or fixtures located on publicly or privately owned real property within the city.

Graffiti implement means any broad-tipped indelible marker, aerosol paint container, gummed label, paint stick, graffiti stick, etching equipment, brush or any other type of device, instrument, liquid, substance, or etching acid capable of leaving a visible mark on any natural or human-made surface or material.

Minor means any person who has not attained the age of 18 years.

Noncommercial property means all property that is not included in the definition of commercial property in this section.

Nonpermanent structures means trailers, dumpsters, traffic signs, barricades, utility poles, traffic signal boxes, and construction equipment.

Nuisance means anything injurious to health so as to interfere with the comfortable enjoyment of life or property, which nuisance affects at the same time an entire community or neighborhood, or any considerable numbers of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Owner means any and all persons with legal and/or equitable title to real property in the city as their names and addresses are shown upon the records of the Miami-Dade County Property Appraiser.

Public right-of-way means any road, parkway, alley, swale, sidewalk, baywalk, beachwalk, cutwalk, boardwalk, easement or other public way.

Supervising adult means an individual 21 years of age or older who has been given responsibility by a minor's parents, legal guardian, or other lawful authority to supervise the minor.

(Ord. No. 2009-3640, § 1, 5-13-09)

Sec. 70-123. - Prohibitions; enforcement; and penalties.

- (a) *Prohibitions.* It shall be unlawful for any person to deface, destroy, or otherwise damage private or public property without the owner's consent, by or through the application of graffiti. In addition, a violation of Florida law prohibiting criminal mischief by the placement of graffiti shall be a violation of this section.
- (b) *Enforcement by code compliance officer; notice of violation.* If a code compliance officer finds a violation of this article, the officer shall issue a notice of violation to the violator as provided in chapter 30. The notice shall inform the violator of the nature of the violation,

amount of fine and other penalties for which the violator may be liable, instructions and due date for paying the fine and completing the voluntary community service, notice that the violation may be appealed by requesting an administrative hearing within 20 days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to request a hearing.

- (c) (1) *Civil fines and penalties for violators.* The following civil fines and penalties shall be imposed for each violation of this section:
- a. First offense\$250.00.
 - b. Second offense (within one year of the first offense)500.00.
 - c. Third or more offenses (within one year of the first offense)1,000.00.
- In lieu of a fine, the special master may accept voluntary community service removing graffiti in the city equivalent to one hour of community service for each \$5.00 of an imposed fine and voluntary restitution. If the community service is not completed and the restitution is not paid within six months of an adjudication of guilt, the fine shall be reinstated.
- (2) *Criminal fines and penalties.* In addition to the above civil fines and penalties, a court may impose both civil fines and penalties, restitution, not less than 40 hours and, if possible, at least 100 hours of community service that involves the removal of graffiti in the city, and imprisonment for up to six months in accordance with the requirements of state law.
- (d) *Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal.*
- (1) A violator who has been served with a notice of violation shall elect either to:
 - a. Pay the civil fine in the manner indicated on the notice; or
 - b. Request an administrative hearing before a special master to appeal the notice of violation within 20 days of the issuance of the notice of violation.
 - (2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73.
 - (3) If the named violator after notice fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.
 - (4) As an alternative to the procedures set forth in subsections(d)(1)—(d)(3), the city may request an administrative hearing pursuant to sections 30-71 through 30-79 if the violation is irreparable or irreversible in nature. In such case, the fines and penalties in said sections shall apply.
 - (5) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- (e) *Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.*
- (1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
 - (2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be

deemed to be a court judgment except for enforcement purposes. After two months from the filing of any lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.

- (f) *Injunctive relief; license or certificate of use revocation.* As an additional means of enforcement, the city may seek injunctive relief and/or revoke an occupational license/certificate of use as set forth in chapters 14 and 18 of this Code when there are more than three offenses by the same violator within one year of the first offense.
- (g) *Liability of parents or legal guardians.* In the case of a minor, the parents or legal guardians shall be jointly and severally liable with the minor for the payment of all fines. Failure of the parents or legal guardian to pay any fines will result in the filing of a lien on the real property of the parents or legal guardians, which lien shall include all administrative costs.

(Ord. No. 2009-3640, § 1, 5-13-09)

Sec. 70-124. - Possession of spray paint and broad-tipped indelible markers; enforcement; penalties.

- (a) *[Intent to make graffiti.]* Possession of spray paint and broad-tipped indelible markers with intent to make graffiti is prohibited.
- (b) *[Minor on public property.]* Possession of spray paint and broad-tipped indelible markers by minors on public property is prohibited. No person under the age of 18 shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any public property, or right-of-way, except in the company of a supervising adult.
- (c) *[Minors on private property.]* Possession of spray paint and broad-tipped indelible markers by minors on private property is prohibited without the consent of the owner. No person under the age of 18 shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent, manager, or person(s) in possession of the property have knowledge of the minor's possession of the aerosol container or broad-tipped indelible marker and have consented to the minor's possession while on his or her property.
- (d) (1) *Civil fines and penalties for violators.* The following civil fines and penalties shall be imposed for each violation of this section:
 - a. First offense\$125.00
 - b. Second offense (within one year of the first offense)250.00
 - c. Third or more offenses (within one year of the first offense)500.00

In lieu of a fine, the special master may accept voluntary community service removing graffiti in the city equivalent to one hour of community service for each \$5.00 of an imposed fine and voluntary restitution. If the community service is not completed and the restitution is not paid within six months of an adjudication of guilt, the fine shall be reinstated.
- (2) *Criminal fines and penalties.* In addition to the above civil fines and penalties, a court may impose both civil fines and penalties, restitution, not less than 40 hours and, if possible, at least 100 hours of community service that involves the removal of graffiti in the city, and imprisonment for up to six months in accordance with the requirements of state law.
- (e) *Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal.*
 - (1) A violator who has been served with a notice of violation shall elect either to:
 - a. Pay the civil fine in the manner indicated on the notice; or

- b. Request an administrative hearing before a special master to appeal the notice of violation within 20 days of the issuance of the notice of violation.
 - (2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73
 - (3) If the named violator after notice fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.
 - (4) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- (f) *Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.*
- (1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
 - (2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.
- (g) *Injunctive relief; license or certificate of use revocation.* As an additional means of enforcement, the city may seek injunctive relief and/or revoke an occupational license/certificate of use as set forth in chapters 14 and 18 of this Code when there are more than three offenses by the same violator within one year of the first offense.
- (h) *Liability of parents or legal guardians.* In the case of a minor, the parents or legal guardians shall be jointly and severally liable with the minor for the payment of all fines. Failure of the parents or legal guardian to pay any fines will result in the filing of a lien on the real property of the parents or legal guardians, which lien shall include all administrative costs.

(Ord. No. 2009-3640, § 1, 5-13-09)

Sec. 70-125. - Responsibility of property owner(s) to abate graffiti; graffiti abatement and notice; enforcement.

- (a)
 - (1) Maintenance or allowance of graffiti to exist for more than seven business days, from the receipt or delivery of the notice to abate graffiti as referenced within this section on a commercial property, or for more than ten business days, from the receipt or delivery of the notice to abate graffiti as referenced within this section on a noncommercial property, is prohibited.
 - (2) Maintenance or allowance of etched graffiti to exist for more than 20 business days from the receipt or delivery of the notice to abate graffiti as referenced within this section on a commercial property, or for more than 30 business days from the receipt or delivery of the notice to abate graffiti as referenced within this section on a noncommercial property is prohibited.
- (b)

Whenever the city becomes aware of the existence of graffiti on any property, a code compliance officer is authorized upon such discovery to give, or cause to be given, notice to abate the graffiti to the property owner or the property owner's agent or manager, as follows:

- (1) *Commercial property.* For commercial property, the property owner or the property owner's agent or manager shall abate the graffiti within seven business days from the receipt or delivery of the notice as referenced within this section, except that etched graffiti shall be abated within 20 business days from the receipt or delivery of the notice as referenced within this section.
 - (2) *Noncommercial property.* For noncommercial property, the property owner, or property owner's agent shall abate the graffiti within ten business days from the receipt or delivery of the notice as referenced within this section, except that etched graffiti shall be abated within 30 business days from the receipt or delivery of the notice as referenced within this section.
- (c) Such notice shall be given by certified mail, return receipt requested; or by hand delivery by code compliance officer to the owner of record of the property described as recorded in the current county tax rolls. Mailed notice shall be deemed complete and sufficient notice when so deposited in the United States mail with proper postage prepaid.
 - (d) The city shall waive painting permit requirements for abating graffiti, subject to the use of the same, or substantially same, colored exterior paint, provided that the existing paint complies with all city requirements.
 - (e) Graffiti abatement shall consist of:
 - (1) Painting of the entire area defaced by graffiti with paint matching, or substantially matching, the permitted paint color on the surface, regardless of whether the city has temporarily abated the graffiti with a different paint color.
 - (2) Pressure-cleaning or cleaning by any other method that will successfully remove graffiti from the area defaced by the graffiti without causing damage.
 - (3) Professional glass restoration or replacement of glass for etched graffiti to completely remove the graffiti.
 - (f) The property owner is responsible for ensuring compliance with sections 142-1191 through 142-1193 of the City Code and a violation of those sections shall be enforced pursuant to sections 114-7 through 114-8. In addition, the property owner is responsible for ensuring compliance with subsections 70-125(a), (b), and (e) and a violation of those subsections shall be enforced pursuant to chapter 30 of the City Code.

(Ord. No. 2009-3640, § 1, 5-13-09; Ord. No. 2011-3719, § 1, 2-9-11)

Sec. 70-126. - Appeal.

- (a) A property owner who has been served with the notice set forth in section 70-125 shall elect either to:
 - (1) Remove or cause to remove the graffiti within the time specified on the notice; or
 - (2) Request an administrative hearing before the special master to appeal the determination of the inspector which resulted in the issuance of the notice.
- (b) An appeal for an administrative hearing shall be held before the special master and shall be accomplished by filing a request in writing to set the hearing for review and mailed to the code compliance officer or designee, not later than two business days after the service of the notice. The remainder of the appeal procedures, and penalty and lien provisions, will be in accordance with sections 30-72 through 30-79 of the Code.

(Ord. No. 2009-3640, § 1, 5-13-09)

Sec. 70-127. - Cost of graffiti removal as lien on property; collection foreclosure and sale.

- (a) Upon failure of the owner of the property to remedy the conditions existing in violation of section 70-123, the code compliance officer shall proceed to have such condition remedied by the city and/or city agent in an effort to abate the nuisance.
- (b) City employees and/or the city's agents may enter upon private property to abate the nuisance pursuant to the provisions of this article. No person shall obstruct, impede, or interfere with any city employee and/or city's agent whenever said person is engaged in the work of graffiti abatement pursuant to this article, or in performing any necessary act preliminary to or incidental to such work as authorized or directed pursuant to this article.
- (c) Following corrective action taken by the city or city's agent, the code compliance officer shall proceed to have all cost incurred thereof to be and become a lien against such property 30 days after notice of completion of work by the city if such costs remain unpaid. Said lien shall be of equal dignity with a lien for special assessments, and with the same penalties and with the same rights of collection, foreclosure, sale and forfeiture provided for special assessment liens.

(Ord. No. 2009-3640, § 1, 5-13-09)

Sec. 70-128. - Interested persons may petition to dispute assessed costs.

- (a) Any person owning property which has been found to be in violation of this article, and upon which remedial work by the city has been done shall have the right, at any time within 30 days after notice of completion of work under this article, to present to the city clerk a sworn petition stating his or her interest in the property and alleging that in the opinion of the petitioner, the cost of the work exceeds the actual cost thereof or is otherwise erroneous.
- (b) Such petition shall be presented to the special master for consideration. The special master may fix and confirm the amount to be charged based on the information presented.

(Ord. No. 2009-3640, § 1, 5-13-09)

Secs. 70-129—70-145. - Reserved.

Miami Beach, Florida, Code of Ordinances >> Subpart A - GENERAL ORDINANCES >> Chapter 70 - MISCELLANEOUS OFFENSES >> ARTICLE III. - GRAFFITI >> DIVISION 2. - SALE OF SPRAY PAINT, BROAD-TIPPED INDELIBLE MARKERS, ETCHING-ACID. >>

DIVISION 2. - SALE OF SPRAY PAINT, BROAD-TIPPED INDELIBLE MARKERS, ETCHING-ACID.

Sec. 70-146. - Sale prohibited.

It shall be unlawful for any person to sell, barter, exchange or otherwise transfer any aerosol containers of spray paint, any broad-tipped indelible marker, or etching acid to any person under the age of 18 years.

(Ord. No. 2009-3640, § 1, 5-13-09)

Sec. 70-147. - Signs required.

Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint, broad-tipped indelible markers, or etching acid shall:

- (1) Place a sign in clear public view at or near the display of such products stating:
Graffiti is a crime. Any person defacing real or personal property not his own with paint or any other liquid or device is guilty of a crime punishable by imprisonment for up to six months, with fines up to \$1,000.00, or up to \$15,000.00 if the violation is irreparable or irreversible in nature, restitution, and a minimum of 100 hours of community service in the city.
- (2) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint, broad-tipped indelible markers, or etching acid stating:
It is a violation of the law punishable by a civil fine of \$250.00 for a first offense to sell aerosol containers of spray paint, broad-tipped indelible markers, or etching acid to persons under 18 years of age.
- (3) Store or cause such aerosol containers, broad-tipped indelible marker, or etching acid to be stored either in the direct line of sight from the cash register work station or any other work station normally continuously occupied while the store is open, or in a place not accessible to the public in the regular course of business without employee assistance, pending legal sale or disposition of such items.

(Ord. No. 2009-3640, § 1, 5-13-09)

Sec. 70-148. - Penalties; procedures for administration.

- (a) Violation of this division shall result in a civil penalty of \$250.00 for a first offense and \$500.00 for all subsequent offenses within 12 months of a prior offense. When three such offenses occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paint, broad-tipped indelible markers, and etching acid for a period of two years.

- (b) Procedures for enforcement, appeals, and collection of fines by the city shall be as provided in sections 30-71 through 30-79

(Ord. No. 2009-3640, § 1, 5-13-09)

Secs. 70-149—70-180. - Reserved.

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