



ORDINANCE 2010-017 (Amendment 2)

GRAFFITI CONTROL ORDINANCE

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANTHONY, NEW MEXICO.

SECTION 1: TITLE.

This Ordinance shall be known and may be cited as the City of Anthony Graffiti Control Ordinance. Hereinafter, this law is sometimes referred to as the "Ordinance." (Ord. 017, 11-18-2010, as amended through February 15, 2023).

SECTION 2: DEFINITIONS.

- A. "Abate" means to permanently remove or cover graffiti.
- B. "Graffiti" when used as a verb means intentionally and maliciously defacing any real or personal property with paint, spray paint, ink, marker, crayon, charcoal or any other material without the consent or reasonable ground to believe that there is consent of the property owner.
- C. "Graffiti" when used as a noun means the visible result of the act of graffitiing.
- D. "Person" means a human being or business entity.
- E. "Property" means any real or personal property within the City. When a portion of privately owned real property abuts on a public right-of-way or easement, the responsibility of the person in control for purposes of this Ordinance shall extend to the center of the public alley or easement or back of street curb line, or edge of payment, or at the edge of dirt roads; however, this shall not restrict in any manner the maintenance of the right of way or easement by the City.

SECTION 3: PROHIBITION OF GRAFFITI.

Graffiti is a public nuisance and form of property damage which is harmful to the welfare the City of Anthony and its residents. As such, it is unlawful to graffiti public or private property within the City.

SECTION 4. ENFORCEMENT AGAINST PERPETRATORS.

- A. **Accessory to Graffiti.** A person may be charged with and convicted of the crime of graffiti as an accessory if he or she procures, counsels, aids or abets in its commission even if he or she did not directly commit the crime and although the principal who directly committed such crime has not been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or has been acquitted, or is a child under the children's code.
- B. **Community Service.** Whoever commits the crime of graffiti may be required as a condition of probation or a deferred or suspended sentence
 1. To perform mandatory community service within a continuous period following conviction; and/or

2. To clean up, repair, or replace the defaced real or personal property; and/or
 3. To make restitution to the property owner or person responsible for the defaced property for the cost of damages and restitution.
 4. If a minor, to attend family counseling.
- C. **Penalty.** Those convicted of graffitiing property may be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed 90 days, or by both.
- D. **Enforcing Officer.** This section of the Ordinance will be enforced by the City's law enforcement officers.

SECTION 5: DUTY TO REMOVE GRAFFITI, ENFORCEMENT, ABATEMENT, LIEN, AND DEFENSES.

- A. **Duty to Remove Graffiti.** When graffiti is not removed by the perpetrator, it is the duty of the person responsible for the defaced property to remove the graffiti.
- B. **Prohibition Against Non-removal.** It is unlawful for any person who owns, possesses, or has primary responsibility for property that has been defaced with graffiti, which is visible from a public right-of-way or City-owned property, to allow the property to remain defaced for a period of thirty (30) calendar days after written notification by the City of the presence of graffiti.
- C. **Enforcing Officer.** This Section of the Ordinance may be enforced by the Neighborhood Services Officer or any City law enforcement officer.
- D. **Methods of Enforcement.** The enforcing officer may enforce this Section by any of the following methods, which shall be utilized at the enforcing officer's discretion according to the severity of the violation and the potential for abatement:
1. Written warnings and an opportunity to cure;
 2. Filing complaints in Municipal Court; and
 3. Service of notices to abate graffiti.
- E. **Penalty.** Upon the Municipal Court finding a person responsible for a violation of this Section, the court shall impose a fine in an amount of up to two-hundred and fifty dollars (\$250.00) for each violation and order the immediate removal of any unremoved graffiti.
- F. **Abatement of Graffiti.**
1. Notice to abate graffiti issued by an enforcing officer shall consist of the following:
 - i. A description of the graffiti;
 - ii. Instructions for abating the graffiti;
 - iii. A warning that if the graffiti is not abated within thirty (30) days, the City will abate it without further notice;
 - iv. Instructions for appealing the enforcing officer's finding of graffiti; and
 - v. Information concerning the Municipal Graffiti Removal Program.
 2. Service of Notice. Notice to abate a graffiti shall be served on the person responsible for the defaced property. If service cannot be made within the City, a copy of the Notice will be posted on the defaced property and published once either by posting in six public places or printing in a newspaper of general circulation.

3. Appealing a Notice.
 - i. Within ten (10) days of receipt of an enforcing officer's Notice, the recipient may file a written appeal of the Notice with the City Clerk, at which time the City Clerk shall:
 1. Notify the enforcing officer to stay all abatement actions;
 2. Fix a date for a quasi-judicial hearing before the Planning and Zoning Commission;
 3. Issue notice vis U.S. Certified Mail of the date, time, place and subject matter of the quasi-judicial hearing to the appellant, the enforcing officer, and the property owners within 100 feet of the premises where the alleged graffiti is located.
 - ii. At the quasi-judicial hearing before the Planning and Zoning Commission, the Commission shall:
 1. Consider all relevant evidence to determine (1) whether graffiti exists on the property and (2) whether the graffiti is visible from a public right-of-way; and
 2. Issue a final determination as to the existence of the graffiti that must be abated under this Ordinance.

The determination of the Planning and Zoning Commission on the existence of graffiti that must be abated shall be the final determination of the City.
 - iii. Any person aggrieved by the determination of the Planning and Zoning Commission may appeal to the district court.
4. Removal of Graffiti by the City. If the owner, possessor, or person primarily responsible for the graffitied property fails to correct, remedy or remove the graffiti
 - i. Within thirty (30) days of being served a copy of the Notice or of the posting and publishing of the Notice; or
 - ii. Within five (5) days of the determination by the Planning and Zoning Commission that graffiti exists and should be abated; or
 - iii. After the district court enters judgment sustaining the determination of the Planning and Zoning Commission,

then the City may remove, cover up, or otherwise abate the graffiti at the cost and expense of the owner, possessor, or person primarily responsible for the graffitied property.
5. The reasonable costs incurred by the City in removing, covering or otherwise abating graffiti shall constitute a lien upon against any real property from which it was removed.
6. Once the removal has taken place and the reasonable costs of removal incurred by the City can be calculated, the City Clerk shall prepare a "Notice of Lien" for filing in the office of the County Clerk which shall contain the following information:
 - i. The number of the ordinance under which the lien is established;
 - ii. The fact that a lien is established;
 - iii. The general purpose of the lien;
 - iv. The name of the owner of the property against which the lien is established as

- determined from the records of the county assessor;
 - v. A description of the property against which the lien is established;
 - vi. The amount of the lien; and
 - vii. If the lien is for more than one period of time, the date for which the lien is established.
7. Following the recording of the Notice of Lien, the Governing Body may declare the full amount due and payable and proceed with foreclosure proceedings on the subject property in the manner provided in NMSA 1978, Sections 3-36-1 through 3-36-6.
 8. If the lien is paid off at any time prior to foreclosure, including any accrued interest, the City Clerk shall release the lien in the manner specified in NMSA 1978, Section 3-36-3.
- G. **Defenses.** It shall be a defense in a Municipal Court prosecution, or an appeal of a Notice to Abate under this section that:
1. The party was not notified by the City in writing of the presence of the graffiti;
 2. The party authorized the identified markings and thus there is no graffiti;
 3. The party has removed graffiti from that particular property three or more times within the preceding 12 months;
 4. Prior to being cited under this section, the party executed and returned a written consent form provided by the City to allow the City to abate the graffiti under the Municipal Graffiti Removal Program and the graffiti was eligible for removal under that program.

SECTION 6: SALE AND DISPLAY OF AEROSOL SPRAY PAINT IN CANS:

- A. **Age Restrictions.** No person shall sell aerosol spray paint in cans to any person under 18 years of age. Proof of age may be shown by any document which contains a picture of the person issued by a governmental agency including but not limited to a motor vehicle operator's license or an identification card issued to a member of the armed forces. Such document shall be prima facie proof of age.
- B. **Posting of Notice.** Any person who owns, manages, or operates a place of business wherein aerosol spray paint in cans is sold shall conspicuously post a copy of this section in such place of business in letters at least three-eighths-inch high.
- C. **Securing Spray Paint.** Any person who owns, manages, or operates a place of business wherein aerosol spray paint in cans is sold, shall secure said spray paint in a locked or other display area inaccessible to the public, such as behind a counter.
- D. **Penalty.** Any person who violates this section is guilty of a petty misdemeanor and shall be subject to a fine in an amount of up to two-hundred and fifty dollars (\$250.00) for each violation.

SECTION 7: RESPONSIBILITY OF PARENT OR LEGAL GUARDIAN FOR GRAFFITI VANDALISM CAUSED BY A MINOR:

- A. **Parental Responsibility.** A parent or legal guardian of a minor commits an offense if he or she knowingly permits the minor to commit the offense of graffiti as defined in this Ordinance.

- B. Penalty.** A violation of this section may be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed 90 days, or by both.
- C. Community Service.** Whoever commits this offense may also be required as a condition of probation or a deferred or suspended sentence.
1. To perform mandatory community service with a continuous period following conviction;
 2. To clean up, repair, or replace the defaced real or personal property; and/or
 3. To make restitution to the property owner for the cost of damages and restoration.
 4. To attend family counseling.

SECTION 8: MUNICIPAL GRAFFITI REMOVAL PROGRAM

A. Establishment and Authorization.

The City hereby establishes a Municipal Graffiti Removal Program and authorizes the City Manager to adopt such regulations and to utilize City personnel and resources, available grants, and volunteer service as may be necessary to accomplish its purpose.

B. Purpose.

The purpose of the Municipal Graffiti Removal Program is to ensure the prompt removal of graffiti from both public and private real property visible from public rights-of-way within the City's boundaries.

C. Program Features and Eligibility

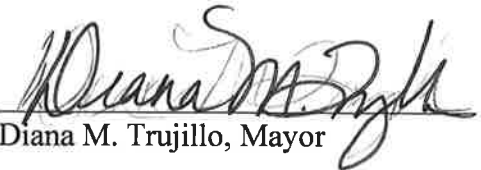
1. City Removal of Graffiti on Privately-Owned Real Property.
 - i. The owner or person responsible for graffitied real property may request, on a City-provided form, that the City remove, cover or otherwise abate graffiti on the requestor's real property.
 - ii. The only graffiti that the City will remove, cover, or otherwise abate is graffiti that is clearly visible from a public right-of way. The determination of whether graffiti is clearly visible is at the sole discretion of City staff.
 - iii. Before City staff may enter the real property of the requestor or perform work thereon, the requestor must execute a consent form prepared by the City (1) consenting to City staff entering the property and (2) releasing both the City and its staff from all claims relating to the work to be performed.
 - iv. As soon as practicable—but no later than fifteen (15) days—after receipt of an executed written consent form from the owner or responsible party, the City staff shall remove, paint over or otherwise abate the graffiti damage at no cost to the requestor.
 - v. The City will not undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the City Manager, or their designee, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the real property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

- vi. In abating graffiti on private real property, the City may use its own materials or those authorized by the real property owner or responsible party.
 - 1. When painting over graffiti, the City will not guarantee a paint match.
- vii. The City may accept donations given for graffiti removal purposes, including cash, paint and paint removal supplies and equipment.
- 2. City Provision of Materials to the Public:
 - i. The City, when practicable, will provide certain graffiti abatement materials and equipment to the public for the sole purpose of graffiti abatement. These graffiti abatement materials include paint, paint thinner, brushes, rollers, and any other equipment or materials which the City Manager determines is appropriate for use by the general public. Reusable equipment must be returned to the City in the same condition as it was provided, with the exception of normal wear and tear.
 - ii. The City will not provide any equipment to the public which due to its cost, the potential for danger, or the need for expertise would be inappropriate for use by the general public.
 - iii. When the City provides graffiti abatement materials and equipment to the public it will do so at no cost.
 - iv. Before receiving any graffiti abatement materials or equipment, persons requesting such materials and equipment must execute a form prepared by the City agreeing to defend, indemnify, and hold the City harmless for any misuse of such equipment and materials.
 - v. The City shall disseminate information where residents may obtain free graffiti abatement materials.
- 3. Coordination Efforts.
 - i. The City will coordinate with the Municipal Court concerning the possible use of offenders to remove or paint over graffiti as a form of public service.
 - ii. The City will coordinate with residents, other public entities, and non-governmental entities to organize community clean ups of graffiti throughout the City.
- 4. Reporting.
 - i. The City Manager or their designee will develop a system for residents to report sightings of graffiti within the City.
 - ii. Annually, the City Manager or their designee will provide a report to the Governing Body concerning:
 - 1. The number of graffiti incidents reported by the public in the last year;
 - 2. The number of times graffiti incidents on private property were abated by City staff in the last year;
 - 3. The annual cost of the Municipal Graffiti Removal Program.

SECTION 9: GRAFFITI REMOVAL FUND

- A. **Creation.** The revenues generated through enforcement of the provisions of this Ordinance shall be placed in a Graffiti Removal Fund.
- B. **Governing Body Approval.** All expenditures from the Graffiti Removal Fund must be approved by the Governing Body.
- C. **Scope of Expenditures.** All expenditures from the Graffiti Removal Fund must serve the purpose of preventing or abating graffiti within the City's boundaries.

PASSED, APPROVED, AND ADOPTED THIS 15th DAY OF February 2023.


Diana M. Trujillo, Mayor



ATTEST:



Karla Oropeza- City Clerk

{SEAL}

ROLL CALL VOTE:

Mayor Pro Tem, Elva Flores
Trustee Javier Silva
Trustee Daniel Barreras
Trustee Gabriel Holguin

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