

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2010 Fall
Supp.

West Group
Publisher

To establish a new process for graffiti abatement by property owners and the Mayor, to provide that certain actions by a property owner shall be deemed to provide consent to permit the Mayor to abate graffiti, to establish an expedited process for adjudication of any notices of violation issued for failure to abate graffiti, to provide for the payment of abatement costs and penalties, to establish a graffiti abatement fund, to provide for liens against property involved in unresolved graffiti violations, and to provide graffiti abatement materials; to amend the Office of Administrative Hearings Establishment Act of 2001 to provide the Office of Administrative Hearings with jurisdiction to adjudicate violations of this act; and to amend the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty act of 1982 to repeal provisions pertaining to graffiti abatement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Anti-Graffiti Act of 2010".

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) "Abate" means to effectively remove or cover.
- (2) "Abatement costs" means the reasonably estimated costs incurred by the District to abate graffiti.
- (3) "Deputy Chief Financial Officer" means the Deputy Chief Financial Officer for the Office of Tax and Revenue or his designee.
- (4) "Graffiti" means any inscription, writing, drawing, marking, or design that is painted, sprayed, etched, scratched, or otherwise placed on structures, buildings, dwellings, statues, monuments, fences, vehicles, or other similar objects that are on personal property located outdoors, or placed on trees, rocks, or other natural features, without the consent or authorization of the property owner, without regard to when that consent or authorization was given, and the graffiti is visible from a public right-of way.
- (5) "Owner" means a property owner or the property owner's designated agent unless otherwise specified.

(6) "Reply" means the response provided by the owner under section 4(c).

Sec. 3. Nuisance.

Graffiti is a nuisance and the owner of the property on which the graffiti is located shall abate the graffiti or authorize the Mayor to abate the graffiti as provided for in section 4.

Sec. 4. Notice of graffiti nuisance and reply.

(a)(1) Whenever the Mayor identifies graffiti, the Mayor shall notify the owner that there is graffiti on the property that must be abated.

(2) The notification shall be provided by delivering a written notice to the property on which, or at which, the graffiti is located. The notification shall be served on the owner or the building superintendent if present, or placed on the door or similar place used for ingress.

(3) In addition, notice shall be delivered by first-class mail to the owner of the premises. If the owner cannot be identified with reasonable certainty for purposes of mail notice, the Mayor shall conspicuously post the notice on the premises or deliver a copy of the notice to the Deputy Chief Financial Officer, who shall post a copy of the notice in a conspicuous place on the property.

(b) The notice shall include reply space for the owner to notify the Mayor whether the owner:

- (1) Will abate the graffiti by the date stated on the notice and, if this option is selected, whether the owner requests graffiti abatement materials;
- (2) Authorizes the Mayor to abate the graffiti; or
- (3) Consents to the presence of the graffiti and does not want the Mayor to abate it.

(c) The notice shall also include a deadline by when the owner must reply and shall inform the owner how to reply. The owner shall reply by either conspicuously posting the notice to the premises where it was originally left, transmitting the notice by facsimile to the number indicated on the notice, mailing it to the address indicated on the notice, returning it in person, or using any other method authorized by regulation and specified on the notice. The deadline shall be not less than 7 calendar days.

(d)(1) If the owner indicates on the reply that the owner will abate the graffiti by the date stated on the notice, and that the owner wants to receive graffiti abatement materials, the Mayor shall leave them at the property subject to the limitations set forth in section 11.

(2) If the owner indicates on the reply that the owner will abate the graffiti, the Mayor shall return to the property no sooner than the abatement deadline stated in the notice to see whether or not the graffiti has been abated. If the graffiti has not been abated, the Mayor shall issue a notice of violation as provided for in section 6.

Sec. 5. Deemed authorization to abate.

If the owner does not reply as provided for in section 4(b)(1), 4(b)(2), or 4(b)(3), the owner shall be deemed to have authorized the Mayor to abate the graffiti. The Mayor may then abate the graffiti as if the owner had provided authorization under subsection 4(b)(2).

Sec. 6. Notice of violation; service of notice.

(a) If an owner elects to abate the graffiti and the graffiti has not been abated by the date stated on the notice, the Mayor may issue a notice of violation for failure to comply with section 3.

(b)(1) The notice of violation shall be served on the owner, or the building superintendent, or the Mayor may deliver the notice by certified mail to the owner of the premises. If the owner cannot be identified with reasonable certainty, the Mayor may conspicuously post the notice on the premises alleged to be in violation and deliver a copy of the notice to the Deputy Chief Financial Officer pursuant to paragraph (2) of this subsection.

(2) The Deputy Chief Financial Officer is authorized to receive notices of violation of section 3 on behalf of any resident or non-resident person who owns property in the District, if the person has not provided to the Deputy Chief Financial Officer a mailing address. The Deputy Chief Financial Officer shall post a copy of the notice served on the Deputy Chief Financial Officer in a conspicuous place on the property.

Sec. 7. Answer and expedited hearing.

(a) An owner who has received a notice of violation shall answer within 5 days after service of the notice of violation. At the time that an owner answers the notice of violation, the owner may request a hearing on the allegations set forth in the notice of violation. If the owner fails to answer as required in the notice of violation, the owner shall be deemed to have admitted

the violation and the Office of Administrative Hearings shall issue a default judgment ordering the owner to pay abatement costs, interest, and penalties as provided for in section 8.

(b) If an owner answers the notice of violation in the manner required in the notice of violation, the Office of Administrative Hearings shall issue a final order on that notice of violation no later than 30 days after the date on which the notice of violation was filed with the Office of Administrative Hearings.

Sec. 8. Payment of abatement costs and penalties.

(a) If a default judgment is issued under section 7 or if, after a hearing, the Office of Administrative Hearings finds the owner responsible for the violation set forth in the notice of violation, the District may abate the graffiti and the owner (not the owner's agent) shall owe to the District 2½ times the District's abatement costs plus a penalty of \$500 for each violation.

(b) The Mayor shall bill the owner for the amount owed under subsection (a) of this

section. If the amount is not paid within 30 days from the date of the bill, interest shall be assessed at the rate of 1½ % per month.

Sec. 9. Graffiti Abatement Fund.

(a)(1) There is established as a nonlapsing fund the Graffiti Abatement Fund (“Fund”), into which shall be deposited:

(A) All fines, penalties, interest, charges and costs, including abatement costs, assessed and collected pursuant to this act;

(B) Any funds in the Graffiti Trust Fund, established by section 4a(g) of the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982, effective June 12, 2001 (D.C. Law 13-309; D.C. Official Code § 22-3312.03a(g)), on the day before the effective date of this act; and

(C) Any civil fines collected as penalties under section 5 of the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1983, effective March 10, 1983 (D.C. Law 4-203; D.C. Official Code § 22-3312.04).

(2) The deposit of these monies shall be subject to the requirements of section (10)(b).

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) The Fund shall be used to offset the costs of implementing this chapter, the costs of graffiti abatement and prevention, and the costs of the Office of Administrative Hearings under this act.

(d) The Mayor shall submit to the Council an annual statement of the Fund’s receipts and disbursements for the preceding year.

Sec. 10. Collection against an owner.

(a)(1) The amount to be paid under a notice of violation and any other charges, expenses, costs, including abatement costs, penalties, and interest shall be a continuing and perpetual lien in favor of the District upon all real and personal property belonging to a person named in the notice and shall have the same force and effect as a lien created by judgment. Interest shall accrue on the amount due at the rate of 1½ % a month.

(2) The lien shall attach to all property belonging to the named person at any time during the period of the lien, including any property acquired by the named person after the lien arises.

(3) The lien shall have priority over all other liens, except for District taxes and District water charges; provided, that the lien shall not be valid as against any bona fide

purchaser, or holder of a security interest, mechanic's lien, or other such creditor interest in the property, until notice of the lien is filed with the Recorder of Deeds. The lien shall be satisfied by payment of the amount of the lien to the District Treasurer.

(4) For reasonable cause shown, the Mayor may reduce the amount of the bill or lien.

(5) The Mayor may contract with any person to collect the amount of the lien and remunerate the person, subject to available appropriations, by fee, by a percentage of the amount collected, or both.

(b) As additional means for collection, the Mayor may enforce payment of the fines, penalties, costs, and interest imposed under this section against the real property of the owner as follows:

(1) The Mayor shall record a real property tax lien, captioned "Notice of Converted Real Property Tax Lien", with the Recorder of Deeds and in accordance with D.C. Official Code § 47-1340. The real property tax lien shall be deemed a delinquent real property tax from the date of the conversion, shall accrue interest at the rate of interest charged for delinquent real property tax, and shall be perpetual. Payment thereof shall be credited to the General Fund of the District of Columbia. The real property may be sold at tax sale, regardless of the date of the conversion, in the same manner, under the same conditions, and subject to the same impositions of interest, costs, expenses, fees, and other charges, as real property sold for delinquent real property tax.

(2) The aggregate amount of the costs, expenses, penalties, and interest secured by the lien imposed under subsection (a) of this section may appear on a real property tax bill, and the aggregate amount shall:

(A) Be deemed an additional real property tax to be collected in the same manner and under the same conditions as real property tax is collected, including the sale of the real property for delinquent tax; and

(B) Be subject to the same penalty and interest provisions as delinquent real property tax is subject as of the date of such real property tax bill.

(c) The lien under subsection (a) of this section, with penalty and interest as provided under this section, shall be converted to real property tax as of the due date for payment of the real property tax bill if payment is not made.

(d) If the lien has been converted to a real property tax lien under D.C. Official Code § 47-1340 or if the accrued amount of the lien appears on the real property tax bill, the real property tax lien shall be enforced under Chapter 13A of Title 47 of the District of Columbia Official Code.

Sec. 11. Graffiti abatement materials.

(a) If the Mayor provides a paint voucher to an owner to abate graffiti at a particular property, the Mayor is not required to provide another paint voucher to abate graffiti at that

property for the 12-month period following the date on which the paint voucher was provided.

(b) If the Mayor provides a graffiti clean-up kit to an owner to abate graffiti at a particular property, the Mayor is not required to provide another clean-up kit to abate graffiti at that property for the 12-month period following the date on which the kit was provided.

(c) The Mayor may provide other types of graffiti removal materials and, by regulation, limit the extent to which they are provided to a property owner.

(d) Nothing in this section precludes the Mayor from providing additional paint vouchers, clean-up kits, or other graffiti abatement materials for use in community anti-graffiti efforts.

Sec. 12. Rules.

(a) The Office of Administrative Hearings, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat.1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of section 7.

(b) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of sections 3, 4, 5, 6, 8, 9, 10, and 11.

Sec. 13. Conforming amendments.

(a) Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended as follows:

Amend
§ 2-1831.03

(1) A new subsection (b-3) is added to read as follows:

“(b-3) In addition to those cases described in subsections (a), (b), (b-1), and (b-2) of this section, as of the effective date of the Anti-Graffiti Emergency Act of 2010, passed on emergency basis on April 20, 2010 (Enrolled Version of Bill 18-750) (“Anti-Graffiti Emergency Act”), this act shall apply to adjudicated cases required to be heard pursuant to section 7 of the Anti-Graffiti Emergency Act.”.

(2) Subsection (c) is amended by striking the phrase “(a), (b), or (b-1)” and inserting the phrase “(a), (b), (b-1), (b-2), or (b-3)” in its place.

(3) Subsection (h) is amended by striking the phrase “(a), (b), or (b-1)” and inserting the phrase “(a), (b), (b-1), (b-2), or (b-3)” in its place.

(b) The Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982, effective March 10, 1983 (D.C. Law 4-203; D.C. Official Code § 22-3312.01 *et seq.*), is amended as follows:

(1) Section 4a (D.C. Official Code § 22-3312.03a) is repealed.

(2) Section 4b (D.C. Official Code § 22-3312.03b) is repealed.

(3) Section 1a (D.C. Official Code § 22-3312.05) is amended as follows:

(A) Paragraph (2) is repealed.

Repeal
§ 22-3312.03a
Repeal
§ 22-3312.03b
Amend
§ 22-3312.05

- (B) Paragraph (3) is repealed.
- (C) Paragraph (7) is repealed.
- (D) Paragraph (8) is repealed.

Sec. 14. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 15. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia