

**Town of Payson
Council Decision Request**

MEETING DATE: 5/24/06 ITEM NO: SUBJECT: Graffiti
Prevention Prohibition and Removal Ordinance.

SUBMITTAL DATE: 5/18/06

SUBMITTED BY: Gordon H. Gartner, Chief of Police

ADVANCE COPIES:

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EXHIBITS (If applicable): Copy of the City of Phoenix ordinance on prevention,
prohibition and removal of graffiti.

EXPENDITURE	AMOUNT	CONTINGENCY FUNDING
ESTIMATE: N/A	BUDGETED: N/A	REQUIRED: N/A

IF IT IS THE WISH OF THE COUNCIL TO SUPPORT RECOMMENDATIONS CONTAINED IN THIS REPORT, THE FOLLOWING MOTIONS ARE SUGGESTED:
I move to direct the Town Attorney's Office to prepare an ordinance that addresses the problem of graffiti prevention prohibition and removal.

SUMMARY OF THE TOPIC FOR WHICH A COUNCIL DECISION IS REQUESTED:
Attached to this Council Decision Request is an ordinance from the City of Phoenix that addresses the issue of graffiti prevention, prohibition and removal. The City of Phoenix ordinance does several things. First, it requires that spray paint only be sold to individuals over the age of eighteen and that it be kept in an area within the store that not accessible to the public without employee assistance. The ordinance also requires that the owner or responsible party for a business that has been victimized by graffiti abate the graffiti within ten days of receipt of a notice of violation. And, obviously the ordinance makes it unlawful for individuals to engage in the crime of graffiti.

Rather than have the Community Development engage in the abatement process with the owners of a building that has graffiti on it, I believe it would be more efficient to have the police department have authority to issue a citation for failure to remove graffiti. The Council may elect to give the business owner more time to remove the graffiti or may want to incorporate a warning process within the ordinance. The police department believes this is critical to addressing the graffiti issue due to the fact that graffiti has a way of encouraging other people to engage in this same conduct.

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JUN 08 2006 I.1

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PROS

By passing this ordinance the spray paint that is oftentimes used to commit the crime of graffiti may be less accessible to young adults and the ordinance requires a business to deal with the graffiti within a reasonable amount of time.

CONS

The purchase of spray paint by the average citizen may be a little more difficult and the business owner, who has already been victimized by having his business spray painted will be required to clean the graffiti within a reasonable time frame.

Sec. 39-10. Graffiti prevention, prohibition and removal.

A. Purpose and intent. It is the purpose and intent of this section to provide a procedure for the prevention, prohibition and removal of graffiti from walls, structures or surfaces on public and private property in order to reduce blight and deterioration within the City and to protect the public health and safety.

Pursuant to Chapter IV, Section 2(3) of the Phoenix City Charter, the City finds and determines that graffiti is obnoxious, contributes to neighborhood deterioration, provides a communication system for gangs and other vandals, damages property, and constitutes a public nuisance, and must be abated immediately to avoid the detrimental impact of such graffiti on the City and its residents, to disrupt the communication system for gangs and other vandals, and prevent the further spread of graffiti.

B. Graffiti prohibited. 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.

1. Notice of violation. Notwithstanding the procedures set forth in Section 39-26 of this ordinance, if it is determined by the City that graffiti exists on property in violation of this ordinance, the City shall, in writing, notify the owner of the property or responsible party through the issuance of a notice of violation providing a maximum of ten days to abate the graffiti, which notice may be served by certified mail, personal service, or by posting the subject property and publishing the notice in the official City newspaper.

2. Notice of violation– Contents. The notice of violation shall identify the property in violation, shall generally describe the location of the graffiti, and direct that the graffiti shall be abated within ten days of receipt of the notice. The notice shall state that in the event the owner or responsible party fails to abate the graffiti within the time period specified in the notice of violation, the City may abate the graffiti and bill the owner or responsible party for the costs thereof. The notice shall state that the owner or responsible party may appeal the notice as provided in Article VI of this ordinance.

3. In the event that the owner or responsible party fails to abate the graffiti as required by the notice of violation, the City may proceed to abate the graffiti, and bill the owner or responsible party for the costs thereof. In the event that the bill is not paid, a statement of the account shall be certified to the City Treasurer who shall collect the same due, together with interest at the rate established by law. The City or its authorized private contractor is expressly authorized to enter private property and abate graffiti thereon in accordance with this section. The City Police Department shall assist in the enforcement of this Ordinance.

C. Prohibited conduct.

1. No person may write, paint, draw, etch or otherwise apply any inscription, figure, or mark of any type on any public or private building 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 permission of the owner or operator of the property has been obtained.

2. No person may possess an aerosol spray paint container, broad-tipped indelible marker or etching implement or solution with the intent to violate the provisions of subsection C(1).

3. No person may possess an aerosol spray paint container, broad-tipped indelible marker or etching solution on any private property unless the owner, agent, manager, or other person having control of the property consented to the presence of the aerosol spray paint container, broad-tipped indelible marker or etching solution.

4. No person under the age of eighteen years may possess an aerosol spray paint container, broad-tipped indelible marker, or etching solution on any public property unless accompanied by a parent, guardian, employer, teacher or other adult in any similar relationship and such possession is for a lawful purpose.

5. No person or firm may sell, deliver or give or cause to be sold, delivered or given to any person under the age of eighteen years, and no person under the age of eighteen years may buy any aerosol spray paint container, broad-tipped indelible marker or etching solution. Evidence that a person, his or her employee, or agent demanded and was shown acceptable evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution under this subsection. This subsection does not apply to the transfer of an aerosol spray paint container, broad-tipped indelible marker or etching solution from a parent to child, guardian to ward, employer to employee, teacher to student or in any other similar relationship when such transfer is for a lawful purpose.

6. A person convicted of a violation of subsection C(1), (2), or (3) of this section is guilty of a Class 1 misdemeanor punishable by a

term of not less than forty-eight hours in jail and not less than eighty hours community service involving participation in the removal of graffiti from the defendant's neighborhood. In addition to any other punishment, the court shall order restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense, or to any person or entity including a political subdivision that has incurred expense to repair or abate such damage or loss to the victim's property, in an amount to be determined by the court. A person convicted of a violation of subsection C(5) of this section is guilty of a Class 1 misdemeanor punishable by a fine of not less than five hundred dollars. A violation of subsection C(4) of this section is a Class 1 misdemeanor and will be punished as provided for in A.R.S. tit. 8 (A.R.S. § 8-101 et seq.). A judge shall not suspend any part or all of the imposition of any fine or jail term required by this section.

D. Storage and display of aerosol spray paint containers, broad-tipped indelible markers or etching solution.

1. It shall be unlawful for any person who owns, conducts, operates or manages a business, where aerosol spray paint containers, broad-tipped indelible markers or etching solution are sold, or any person who sells or offers for sale aerosol spray paint containers, broad-tipped indelible markers or etching solution, to store or display, or cause to be stored or displayed, such aerosol spray paint containers, broad-tipped indelible markers or etching solution in an area that is accessible to the public without employee assistance in the regular course of business pending legal sale or other disposition.

2. Nothing herein shall preclude the storage or display of aerosol spray paint containers, broad-tipped indelible markers or etching solution in an area viewable by the public so long as such items are not accessible to the public without employee assistance.

3. A person who violates subsection D(1) of this section shall be subject to a civil sanction of not less than five hundred dollars.

(Ord. No. G-3859, § 3; Ord. No. G-4390, § 2, passed 10-3-2001, eff. 11-2-2001)

Cross references: Minors, ch. 22; offenses against property, § 23-83 et seq.

State law references: Penalty for ordinance violations, A.R.S. §§ 9-499.01, 9-240(B)(28).

ARTICLE III.

ADMINISTRATION AND ENFORCEMENT

Sec. 39-11. Authority to enforce standards.

A. The City Manager or designee shall enforce the provisions of this ordinance. In addition, the City