

Chapter 13.40

GRAFFITI ABATEMENT

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13.40.010 Definitions.

As used in this chapter:

"Aerosol container of paint" means any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint or other fluid which is not water soluble and which is capable of defacing property.

"Marker" means any marker containing a fluid which is not water soluble and has a point, brush, applicator or other writing surface of three-eighths of an inch or greater.

"Minor" means a person who is under the age of eighteen years of age.

"Public building" means any building, or part thereof, owned, controlled or used by the United States of America, the state of Texas, or any agency or political subdivision thereof.

"Public facility" means any park, plaza, playground, picnic area, stadium, ball park, swimming pool, or amphitheater which is designed or held for use by the public. (Ord. 12965 § 2, 1996)

13.40.020 Furnishing a marker to a minor.

A. It is unlawful for any person to sell, give, donate or otherwise furnish a marker to a minor.

B. It shall be an affirmative defense to prosecution under this section that the minor was furnished with the marker by his or her parent or guardian or by another person for use in the minor's employment or in connection with a school, civic or religious activity; provided, that such parent, guardian or other person supervised the minor in his or her use of the marker, and such parent, guardian or other person regained or attempted to regain the marker from the minor immediately upon completion of the minor's use of the marker. (Ord. 12965 § 3, 1996)

13.40.030 Possession of a marker by a minor.

A. It is unlawful for a minor to possess a marker.

B. It shall be an affirmative defense to prosecution under this section that the minor was furnished with the marker by his or her parent or guardian or by another person for use in the minor's employment or in connection with a school, civic or religious activity, and the minor was supervised by such parent, guardian, or other person who regained the marker from the minor immediately upon completion of the minor's use of the marker. (Ord. 12965 § 4, 1996)

13.40.040 Possession of aerosol containers of paint by minors.

A. It is unlawful for a minor to possess an aerosol container of paint.

B. It shall be an affirmative defense to prosecution under subsection A of this section that:

1. The minor possessed the aerosol container of paint in connection with a use in accordance with its intended purpose;

2. An adult having supervisory responsibility over the minor provided the minor with the aerosol container of paint;

3. The minor's possession and use of the aerosol container of paint took place under such adult's direct supervision and in such adult's presence; and

4. The adult regained the aerosol container of paint from the minor immediately upon completion of the minor's use of the aerosol container of paint. (Ord. 12965 § 5 (part), 1996)

13.40.050 Possession of aerosol containers of paint and markers in public areas.

A. It is unlawful for any person age eighteen or older to possess an aerosol container of paint or a marker on the property of another or in any public building or upon any public facility, other than on the premises of the person's employer.

B. It shall be an affirmative defense to prosecution under subsection A of this section that the owner, manager, or other person having administrative or other control of the property, building, or facility consented to the presence of the aerosol container of paint or marker. (Ord. 12965 § 6, 1996)

13.40.100 Graffiti abatement—Purpose and intent.

A. It is the purpose and intent of Sections 13.40.100 through 13.40.120 of this code to provide a procedure for removal of graffiti from walls and structures on property next to or visible from the rights-of-way within the city in order to reduce blight and deterioration within the city, to reduce crime and lawlessness, and to protect the public health and safety.

B. The city finds and determines that graffiti is an impure and unwholesome matter and its existence on property next to and visible from the rights-of-way in the city constitutes a public nuisance; the prompt abatement of which is a public necessity to avoid the detrimental impact of such graffiti on the city and its residents, to prevent the further spread of graffiti and other criminal acts, and to protect the health, safety and welfare of the residents of the city. (Ord. 13326 § 1, 1997)

13.40.110 Graffiti abatement—Removal of graffiti.

The chief of police and his designees are authorized to develop, use and accept on behalf of the city, the signatures of property owners and authorized agents of property owners on the consent to entry and release of liability agreement required under Section 13.40.120 of this code. The chief of police and his designees are also authorized to accept, on behalf of the city, all donations given for graffiti removal purposes, including supplies and equipment which the chief or his designees determine are appropriate for use in graffiti removal. (Ord. 13326 § 2, 1997)

13.40.120 Graffiti abatement—Obligations of property owner.

A. Any property owner, any authorized agent of a property owner of property lying within the city limits may request and receive as may be available the assistance of the city with the removal of graffiti from their property which is next to or visible from the rights-of-way in the city. Such property owner or authorized agent of a property owner shall first sign a consent to entry and release of liability agreement as may be prepared and used by the city before the city may remove or clean any such graffiti from their property.

B. Any community, governmental or nonprofit organization that provides free graffiti removal services within the city, may also request and receive supplies as may be available or transportation for supplies that will be used for the removal of graffiti from property which is next to or visible from the rights-of-way in the city, provided that such removal is done with the consent of the property owner. Any organization that receives any city assistance under this section shall provide proof of compliance with this section upon the request of the chief of police or his designees.

C. Any property owner or any authorized agent who signs a consent to entry and release of liability agreement and who sells the property or becomes no longer authorized by the property owner to consent to the removal of graffiti from property during the

time period in which a consent to entry and waiver and release of liability agreement is in effect regarding the property, shall immediately notify the city of such sale or removal of authorization. Procedures for the making of such notice shall be contained in the consent to entry and release of liability agreement. (Ord. 13326 § 2, 1997)

Change in Graffiti Law Effective September 1, 1999

Effective for all graffiti offenses occurring after September 1, 1999, "etching or engraving devices" are now included as graffiti "tools," along with aerosol paint and indelible markers. An "etching or engraving device" is a device that makes a delineation or impression on tangible property, regardless of the manufacturer's intended use.

Also, graffiti is now a state jail felony if the mark is made on a private or public elementary or secondary school or institution of higher education.

AN ORDINANCE AMENDING TITLE 13 (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 13.40 (GRAFFITI ABATEMENT) OF THE EL PASO MUNICIPAL CODE BY ADDING PROVISIONS RELATING TO THE CLEANING AND REMOVAL OF GRAFFITI.

WHEREAS, the placement of graffiti on public and private property is a widespread problem in the City of El Paso, causing damage to property, lowering property values, causing the intimidation of people, and the promotion of a lawless environment, thus impairing the health, safety and welfare of the residents and businesses of El Paso; and

WHEREAS, immediate graffiti clean-up is an important part of fighting graffiti and related gang activity; and

WHEREAS, the City Council finds it necessary to take as many steps as possible to prevent or reduce the detrimental impact of graffiti on the City and its residents and businesses; and

WHEREAS, removal of graffiti on private property that is next to or visible from the rights-of-way benefits all residents of the City, and such benefits are not limited to the owners of the properties from which graffiti is removed.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Section 13.40.100 (Graffiti Abatement - Purpose and Intent) be added to read as follows:

Section 13.40.100 Graffiti Abatement - Purpose and Intent.

A. It is the purpose and intent of Sections 13.40.100 through 13.40.120 of this Code to provide a procedure for removal of graffiti from walls and structures on property next to or visible from the rights-of-way within the City in order to reduce blight and deterioration within the City, to reduce crime and lawlessness, and to protect the public health and safety.

B. The City finds and determines that graffiti is an impure and unwholesome matter and its existence on property next to and visible from the rights-of-way in the City constitutes a

public nuisance; the prompt abatement of which is a public necessity to avoid the detrimental impact of such graffiti on the City and its residents, to prevent the further spread of graffiti and other criminal acts, and to protect the health, safety and welfare of the residents of the City.

Section 2. That Section 13.40.110 (Graffiti Abatement - Removal of Graffiti) be added to read as follows:

Section 13.40.110 Graffiti Abatement - Removal of Graffiti

The Chief of Police and his designees are authorized to develop, use and accept on behalf of the City, the signatures of property owners and authorized agents of property owners on the Consent to Entry and Release of Liability Agreement required under Section 13.40.120 of this Code.

Section 3. That Section 13.40.120 (Graffiti Abatement - Obligations of Property Owner) be added to read as follows:

Section 13.40.120 Graffiti Abatement - Obligations of Property Owner.

A. Any property owner or authorized agent of a property owner of property lying within the city limits of the City of El Paso may request the assistance of the City with the removal of graffiti from their property which is next to or visible from the rights-of-way in the City. Such property owner or authorized agent of a property owner shall first sign a Consent to Entry and Release of Liability Agreement as may be prepared and used by the City before the City may remove or clean any such graffiti.

B. Any property owner or any authorized agent who signs a Consent to Entry and Release of Liability Agreement and who sells the property or becomes no longer authorized by the property owner to consent to the removal of graffiti from property during the time period in which a consent to entry and waiver and release of liability agreement is in effect regarding the property, shall immediately notify the City of such sale or removal of authorization. Procedures for the making of such notice shall be contained in the Consent to Entry and Release of Liability Agreement.