

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 to authorize the Mayor to assume financial responsibility for removing graffiti from privately-owned property, to establish a process for notice and an opportunity for hearing before the Mayor may enter private property to remove graffiti whenever the property owner has failed to sign a waiver accepting the Mayor's graffiti removal services and has not otherwise abated the graffiti, to provide for community service as an additional penalty for the defacement of public or private property, to provide for restitution to the victims of graffiti, to establish a graffiti abatement and citizen reward fund, to hold parents and guardians civilly liable for all fines imposed whenever the minor cannot pay within a reasonable period of time; and to amend section 23-581 of the District of Columbia Code to authorize law enforcement officers to make a warrantless arrest if the officer has probable cause to believe that a person has committed an illegal act of graffiti.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Anti-Graffiti Amendment Act of 2000".

Sec. 2. The Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 is amended as follows:

(a) A new section 1a is added to read as follows:

"Sec. 1a. Definitions.

"For the purposes of this act, the term:

"(1) "Abate" means to effectively remove.

"(2) "Department" means the Department of Public Works.

"(3) "Director" means the Director of the Department of Public Works.

"(4) "Graffiti" means an 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 materials that are on public or private property without the consent of the owner, manager, or agent in charge of the property, and the graffiti is visible from a public right-of-way.

"(5) "Graffiti material" means any aerosol can, bottle, spray device or other

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mechanism designed to dispense paint or a similar substance under pressure, indelible marker, paint stick, adhesive label, and engraving device capable of leaving a visible mark on a natural or man-made surface.

"(6) "Minor" means a person less than 18 years of age.

"(7) "Nuisance" means any building, sign, or other structure, or premises which, because of graffiti, may encourage more graffiti, increase criminal activity in the surrounding areas, or create an impression of social and economic decline.

"(8) "Owner of a sign" shall include the person in charge, possession, or control of the sign.

"(9) "Public or private property" shall include any building, bridge, fence or other structure, any street, alley, sidewalk, or other vehicular or pedestrian right-of-way, any article of street furniture, lamppost, bus shelter, newspaper box, or trash receptacle, any tree, rock, or other natural fixture, any utility or public service equipment, or any other personal property located outdoors, whether publicly or privately owned.

"(10) "Sign" means a name, identification, description, display, or illustration which is affixed to, or represented directly or indirectly upon a building, structure, or piece of land and which directs attention to an object, product, place, activity, person, institution, organization, or business.”

(b) A new section 4a is added to read as follows:

“Sec. 4a. Abatement of graffiti.

"(a) Any person applying graffiti on public or private property shall have the duty to abate the graffiti within 24 hours after notice by the Director, the Chief of Police, or the private owner of the property involved. Abatement shall be done in a manner prescribed by the Director. Any person applying the graffiti shall be responsible for the abatement or payment for the abatement. When graffiti is applied by a minor, the parents or legal guardian shall also be responsible for the abatement or payment for the abatement if the minor is unable to pay.

“(b) Subject to the availability of annual appropriations for that purpose, the Mayor shall provide graffiti removal services to abate graffiti on public property. The Mayor shall provide, subject to appropriations, graffiti removal services for the abatement of graffiti on private property that is visible from the public right-of-way without charge to the property owner if the property owner first executes a waiver of liability in the form prescribed by the Mayor.

“(c) Whenever any building, sign, or other structure, or premises within the District are determined by the Mayor to have become a nuisance because of graffiti and the property owner fails to accept the Mayor’s graffiti removal services after the Mayor has attempted in good faith to obtain consent and a waiver of liability from the owner for such services, the Mayor may serve the owner of the building, sign, or other structure, or premises a notice of nuisance abatement in writing, in the form set forth in subsection (e) of this section. The notice shall be served on the owner by personal delivery or by certified mail, but if graffiti is found on a sign and the owner of the sign cannot be found, or his whereabouts cannot be ascertained, notice may be attached to the sign.

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“(d)(1) The property owner may dispute the Mayor’s determination through an adjudication by mail or at an administrative hearing on the grounds that:

“(A) The inscription, writing, drawing, marking, or design that the Mayor has determined to constitute graffiti is on the property with the owner’s consent;

“(B) The graffiti has been removed at the owner’s expense; or

“(C) The owner has filed a waiver of liability consenting to receive, without charge, the Mayor’s graffiti removal services.

“(2) A request for an adjudication by mail shall include a written statement signed by the owner of the property setting forth facts relevant to establishing a defense to the Mayor’s determination and any documentary evidence which supports the owner’s defense.

“(3) Upon the owner’s failure to remove the graffiti, file a waiver of liability consenting to receive, without charge, the Mayor’s graffiti removal services, or submit to the Mayor a written request for a hearing or an adjudication by mail to dispute the Mayor’s determination that the property identified in the notice has become a nuisance because of graffiti, either by mail, courier, or in person, within 60 days of the date of the personal delivery, certified mailing, or attachment to a sign of the notice, the Mayor, or the Mayor’s agents or contractors, may enter or access the property specified in the notice and abate the nuisance by removing or concealing the graffiti.

“(4) Upon receipt of a timely request for a hearing or an adjudication by mail, the Mayor shall designate a hearing officer who shall conduct the hearing or adjudication by mail within 30 days of receiving the request.

“(5) Upon a hearing officer’s finding that the property has become a nuisance because of graffiti and that the property owner has failed to establish any of the defenses listed in paragraph (1) of this subsection, the Mayor, or the Mayor’s agents or contractors, may enter or access the property specified in the notice and abate the nuisance by removing or concealing the graffiti.

“(6) Whenever the Mayor, or the Mayor’s agents or contractors, abates graffiti pursuant to this subsection, the Mayor may assess the costs of the graffiti abatement, including all administrative, personnel, and material expenses, against the owner of the property upon which the graffiti was abated. The Mayor shall bill the owner for these costs. If the owner fails to pay the bill within 30 days from the date of the bill, the bill shall be considered unpaid.

“(e) The notice served pursuant to this section shall state the following:

Notice of Nuisance Abatement

Pursuant to this act, the District of Columbia has determined that the property at the following address [describe property (for example, building, sign) and insert address] has become a nuisance because of graffiti located [describe where on the structure or structures the graffiti marks are located] on this property. Unless you remove the graffiti, file a waiver of liability consenting to receive, without charge, graffiti removal services from the Mayor, or submit to the Mayor a written request for a hearing or an

adjudication by mail to contest the Mayor's determination within 60 days of the date of the personal delivery, certified mailing, or attachment to a sign of this notice, you will be deemed to have given permission to the Mayor's agent or contractor to enter and access the specified property and utilize the means they determine appropriate to remove or conceal the graffiti at the specified location. If you request a hearing or an adjudication by mail, you may contest the determination that your property has become a nuisance, on the grounds that: (1) the inscription, writing, drawing, marking or design that the Mayor has determined to constitute graffiti is on the property with your consent; (2) the graffiti has been removed at your expense; or (3) you have filed a waiver of liability consenting to receive, without charge, graffiti removal services from the Mayor. This constitutes notice that the Mayor, or the Mayor's agent or contractor, shall work on as much of the structure as necessary to remove or conceal the graffiti, and that none of the individuals or organizations participating in this activity shall be responsible for removing or concealing the graffiti expressly to your satisfaction.

"(f) In no case shall the agency or organization performing abatement under subsection (b) of this section be required to clean, paint, or repair any area more extensive than where the graffiti is located.

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"(g)(1) There is established a Graffiti Trust Fund separate from the General Fund of the District of Columbia.

"(2) Fines collected as penalties under section 5 shall be deposited in the Graffiti Trust Fund, along with any monetary donations or in-kind services and materials received from persons wishing to contribute to the fund.

"(3) The Mayor shall direct expenditures of monies and services from the fund. The expenditures shall be limited to payment of the cost of graffiti abatement (including paint, equipment, and materials necessary to abate graffiti), the operation of an anti-graffiti hotline, and rewards limited to \$50 for information leading to the conviction of violators of the provisions of this act."

(c) A new section 4b is added to read as follows:

"Sec. 4b. Collection against an owner.

"(a)(1) The amount to be paid under an unpaid bill for graffiti abatement shall be a continuing and perpetual lien in favor of the District upon all property, whether real or personal, belonging to a property owner to whom the bill was sent and shall have the same force and effect as a lien created by judgment. Interest shall accrue thereon at the rate of one and 1/2% per month, or part thereof, from the date of the bill.

"(2) The lien shall attach to all property belonging to the owner at any time during the period of the lien, including any property acquired by the owner after the lien

arises.

"(3) The lien shall have priority over all other liens, except liens for District taxes and District water charges; provided, that the lien shall not be valid as against any bona fide purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice is given by filing the lien in the Recorder of Deeds. The lien shall be satisfied by payment of the amount of the lien to the Department.

"(4) For reasonable cause shown, the Mayor may abate 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 by fee, by a percentage of the amount collected, or both.

"(b)(1) 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:

"(A) The Department 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. 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. Subject to D.C. Code § 47-1340(f), 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.

"(B) 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:

"(i) 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;

"(ii) Notwithstanding section 4a(g), be credited to the General Fund of the District of Columbia; and

"(iii) 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.

"(2) If the lien has been converted to a real property tax lien under D.C. 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 Code.”.

(d) Section 5 is amended to read as follows:

“Sec. 5. Penalties.

“(a) Any person who violates any provision of section 2 shall be fined not less than \$250 or more than \$1,000, or imprisoned for a period not to exceed 180 days, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of section 2, pursuant to the Litter Control Administrative Act of 1985.

“(b) Any person who violates any provision of sections 3 or 4 shall be guilty of a misdemeanor punishable by a fine not to exceed \$500, or imprisonment not to exceed 180 days, or both.

“(c) In addition to the penalties provided in subsection (a) of this section, a person convicted of violating any provision of section 2 may be required to perform community service as provided in D.C. Code § 16-712.

“(d) Any person who willfully places graffiti on property without the consent of the owner shall be subject to the sanctions in subsection (a) of this section.

“(e) Any person who willfully possesses graffiti material with the intent to place graffiti on property without the consent of the owner shall be fined not less than \$100 or more than \$1,000.

“(f) In addition to any fine or sentence imposed under this section, the court shall order the person convicted to make restitution to the owner of the property, or to the party responsible for the property upon which the graffiti has been placed, for the damage or loss caused, directly or indirectly, by the graffiti, in a reasonable amount and manner as determined by the court.”.

“(g) The District of Columbia courts shall find parents or guardians civilly liable for all fines imposed or payments for abatement required if the minor cannot pay within a reasonable period of time established by the court.

Sec. 3. Section 581 of Title 23 of the District of Columbia Code is amended by adding a new subsection (a-3) to read as follows:

“(a-3) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed an offense as provided in sections 22-3112.1, 22-3112.2, and 22-3112.3.”.

Sec. 4. 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. Code § 1-233(c)(3)).

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Sec. 5. 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), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), 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. Code § 1-233(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia