

_____	_____	1
Councilmember Phil Mendelson	Councilmember Jim Graham	2
	A BILL	3
	_____	4
	IN THE COUNCIL OF THE DISTRICT OF COLUMBIA	5
	_____	6
Councilmembers Phil Mendelson and Jim Graham introduced the following bill, which was		7
referred to the Committee on _____.		8
To establish a new process for graffiti abatement by property owners and the Mayor, to		9
provide that certain actions by a property owner will be deemed to provide consent to		10
permit the Mayor to abate graffiti, to establish an expedited process for adjudication of		11
any notices of violation issued for failure to abate graffiti, to provide for the payment of		12
abatement costs and penalties, to establish a graffiti abatement fund, to provide for liens		13
against property involved in unresolved graffiti violations, to provide graffiti abatement		14
kits, to provide limited immunity from liability for the District government in connection		15
with graffiti abatement activities, to establish penalties, and to make conforming		16
amendments.		17
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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,		20
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That this act may be cited as the “Anti-Graffiti Act of 2009”.		22
Sec. 2. Definitions.		23
(a) For the purposes of this act, the term:		24
(1) “Abate” means remove or cover.		25
(2) “Abatement costs” means the reasonably estimated costs incurred by the		26
District to remove or cover graffiti.		27

(3) “Deputy Chief Financial Officer” means the Deputy Chief Financial Officer for the Office of Tax and Revenue or his designee.

(4) “Etching cream” means any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces.

(5) “Graffiti” means any writing, drawing, marking, or design that is painted, sprayed, etched, scratched, or otherwise placed on structures, buildings, dwellings, statues, monuments, fences, vehicles, any personal property located outdoors, trees, rocks, or other natural fixtures, without the consent or authorization of the property owner.

(6) “Owner” means a property owner or the property owner's designated agent unless otherwise specified.

(7) “Reply” means the response provided by the owner under subsection 4(c) of this act.

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 of this act.

Section 4. Notice of graffiti nuisance and reply.

(a) Whenever the Mayor identifies graffiti, the Mayor shall notify the owner that there is graffiti on the property that must be abated. This notification shall be provided by delivering a written notice to the property on which the graffiti is located. If the property on which the graffiti is located has a door, or if it is appurtenant to a structure that has a door, the notice shall be

placed on the door. The Mayor may, by regulation, provide for service of this notice by some other method if there is no door on the property on which the graffiti is located.

(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 removal materials;

(2) Authorizes the Mayor to abate the graffiti; or

(3) Does not agree to remove the graffiti and does not authorize the Mayor to abate the graffiti. The notice shall state that selection of this option could result in enforcement action being taken against the owner (and not the owner's agent).

(c) The notice shall also include a deadline by which the owner must reply by returning the notice to the door where it was originally left, faxing the notice to the number indicated on the notice if one is provided, or using any other method authorized by regulation. The Mayor will return to the property to retrieve the reply no sooner than the deadline stated on the notice.

(d)(1) If the owner indicates on the reply indicates 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 limitation set out in section 11 of this act.

(2) If the owner indicates on the reply that the owner will abate the graffiti, the Mayor will 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 it has not, the Mayor shall issue a notice of violation as provided for in section 6 of this act.

(3) If the owner indicates on the reply that the owner does not intend to abate the graffiti and does not authorize the Mayor to abate the graffiti, then the Mayor may issue a notice of violation against the property under the procedures set out in section 6 of this act. The Mayor shall not abate the graffiti until that notice of violation is upheld or the property owner later authorizes the Mayor to abate the graffiti.

Sec. 5. Deemed authorization to abate; limitation of liability.

(a) If the owner does not reply as provided for in subsection 4(b)(1), 4(b)(2), or 4(b)(3) of this act, or replies by stating that the owner does not agree to abate the graffiti and does not authorize the Mayor to abate the graffiti as provided for in subsection 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) of this act.

(b) The owner's authorization (including any deemed authorization) to the Mayor to abate graffiti constitutes consent for the Mayor to enter on to the property to conduct the abatement activity and a waiver of any claims against the District based on graffiti abatement actions undertaken by the Mayor, other than claims for damages based on gross negligence or willful misconduct.

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, or if the reply indicates that the owner does not agree to abate the graffiti and the owner does not authorize the Mayor to abate the graffiti, the Mayor may issue a notice of violation for failure to comply with section 3 of this act.

(b)(1) The notice of violation shall be served on the owner, the owner's authorized agent,

the building superintendent, or any other responsible individual at the premises, or the Mayor 1
may deliver the notice by certified mail to the owner of the premises or to the person responsible 2
for the nuisance. If the owner cannot be identified with reasonable certainty, the Mayor may 3
conspicuously post the notice on the premises alleged to be in violation and deliver a copy of the 4
notice to the Deputy Chief Financial Officer pursuant to subsection (b)(2) of this section. 5

(2) The Deputy Chief Financial Officer is authorized to receive notices of violation of 6
section 3 of this act on behalf of any resident or non-resident person who owns property in the 7
District, if the person has not provided to the Deputy Chief Financial Officer a mailing address. 8
The Deputy Chief Financial Officer shall post a copy of the notice served on the Deputy Chief 9
Financial Officer for the Office of Tax and Revenue in a conspicuous place on the property. 10

Sec. 7. Answer and Expedited Hearing. 11

(a) An owner who has received a notice of violation shall answer within 5 days after 12
service of the notice of violation. At the time that an owner answers the notice of violation, the 13
owner may request a hearing on the allegations set out in the notice of violation. If the owner 14
fails to answer as provided in the notice of violation, the owner shall be deemed to have admitted 15
the violation and the Office of Administrative Hearings shall issue a default judgment ordering 16
the owner to pay abatement costs, interest, and penalties as provided for in section 8 of this act. 17

(b) If an owner answers the notice of violation in the manner required in the notice of 19
violation, the Office of Administrative Hearings shall issue a final order on that notice of 20
violation no later than 30 days after the date on which the notice of violation was filed with the 21
Office of Administrative Hearings. 22

Sec. 8. Payment of Abatement Costs and Penalties 1

(a) If a default judgment is issued under section 7 of this act or if, after a hearing, the 2
Office of Administrative Hearings finds the owner responsible for the violation set out in the 3
notice of violation, then the District may abate the graffiti and the owner (and not the owner's 4
agent) shall owe to the District two and one-half times the District's abatement costs plus a 5
penalty of \$500.00 for each violation. 6

(b) The Mayor shall bill the owner for the amount owed under subsection (a) of 7
this section. If the amount is not paid within 30 days from the date of the bill, interest shall be 8
assessed at the rate of one and one-half percent per month. 9

Sec. 9. Graffiti Abatement Trust Fund established. 10

(a) A Graffiti Abatement Fund (“Fund”) is hereby established, separate from the General 11
Fund of the District of Columbia, into which all fines, penalties, interest, charges and costs, 12
including abatement costs, assessed pursuant to this act, any funds in the Graffiti Trust Fund, 13
established by § 4a of the Anti-Intimidation and Defacing of Public or Private Property Criminal 14
Penalty Act of 1982, effective June 12, 2001 (D.C. Law 13-309; D.C. Official Code § 22- 15
3312.03a(g), on the day before the effective date of this act, and any fines collected as penalties 16
under § 5 of the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty 17
Act of 1983, effective June 12, 2001 (D.C. Law 13-309; D.C. Official Code § 22-3312.04), shall 18
be deposited. The deposit of these monies shall be subject to the requirements of subsection 19
(10)(b) of this act. 20

(b) The Fund shall be continuing. Revenues deposited in the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available to the Mayor for the uses and purposes set forth in this act, subject to authorization by Congress.

(c) Monies deposited into the Fund shall be used to offset some of the costs of implementing this chapter and some of the costs of graffiti abatement and prevention.

(d) The Mayor shall submit to the Council an annual statement of the Fund's receipts and disbursements for the preceding fiscal 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 one and one-half percent 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 liens 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. 1
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(5) The Mayor may contract with any person to collect the amount of the lien and remunerate the person, subject to an available appropriations, by fee by a percentage of the amount collected or both. 3
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(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: 6
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(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 § 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. 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. 9
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(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: 17
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(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 20
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(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 § 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.

Sec. 11. Graffiti abatement kits.

(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 twelve-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 twelve-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 removal materials for use in community anti-graffiti efforts.

Sec. 12. Rulemaking authority

(a) The Office of Administrative Hearings is authorized to issue rules to implement section 7 of this act, in accordance with the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat.1204; D.C. Official Code § 2501 *et seq.*).

(b) The Mayor is authorized to issue rules to implement sections 3, 4, 5, 6, 8, 9, 10, and 11 of this act, in accordance with the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2501 *et seq.*).

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:

(1) By adding a new subsection (b-2) to read as follows:

“(b-2) In addition to those cases described in subsections (a), (b), and (b-1) of this section, as of the effective date of the Omnibus Graffiti Reduction Act of 2007, this act shall apply to adjudicated cases required to be heard pursuant to section 7 of the Omnibus Graffiti Reduction Act of 2007.

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

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

Sec. 14. Fiscal impact

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, 1
approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)). 2

Sec. 15. Effective date. 3

This act shall take effect following approval by the Mayor (or in the event of a veto by the 4
Mayor, action by the Council to override the veto), a 30-day period of Congressional review by 5
the Mayor as provided in § 602 (c)(1) of the District of Columbia Home Rule Act, approved 6
December 24, 1973 (87 Stat 813; D.C. Official Code § 1-206.02(c)(1), and publication in the 7
District of Columbia Register. 8