

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES  
OF MEMPHIS, TENNESSEE CHAPTER 20,  
MISCELLANEOUS OFFENSES AND PROVISIONS TO ADD  
ARTICLE VII - GRAFFITI VANDALISM.

**WHEREAS**, the proliferation of graffiti vandalism contributes to urban blight and destroys the rights of property owners and the value of property; graffiti vandalism has erupted to a nationwide epidemic costing billions of dollars annually; and

**WHEREAS**, graffiti vandalism is committed by adults as well as juveniles and is often connected to hate crimes, drug activity and gang violence; and

**WHEREAS**, the timely removal of graffiti from public and private buildings send an important message to offenders that the defacement and vandalism of property will not be tolerated.

**SECTION 1, NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS**, that Chapter 20, Miscellaneous Offenses and Provisions is hereby amended to add Article VII, "Graffiti Vandalism" which shall read as follows:

**Section 20-151. Definitions.**

For the purpose of the ordinance codified in this chapter, words and phrases shall have the following meanings, unless otherwise clearly indicated by the context:

"Aerosol paint container" means any aerosol container which is adapted or made for the purpose of spraying paint or other substance capable of defacing property.

"Felt tip marker" means any indelible marker or similar implement with a tip which, at its broadest width, is greater than one-quarter of an inch, containing ink or other pigmented liquid which is not water soluble.

"Graffiti" means any inscription, word, figure, or design that is marked, etched, scratched, drawn, painted, pasted or otherwise affixed to or, on any surface, regardless of the nature of the material of that structural component, to the extent that same was not authorized in advance by the owners thereof.

"Graffiti implement" means an aerosol paint container, a felt tip marker, or a graffiti stick.

"Graffiti stick" means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure, and upon application, of leaving a mark at least one-quarter of an inch in width and not water-soluble.

**Section 20-152. Graffiti prohibition.**

A. It shall be unlawful for any person to apply graffiti on any public or privately owned structures located on public or privately owned real property located within the area of the City of Memphis.

B. All persons directly or indirectly involved in acts of graffiti vandalism may be found to be equally responsible and guilty of the act, in addition to the individual who may personally deface the object or area, such as others in the group who knowingly make available the tools, writing materials, ladders, lookouts, materials or assistance, or who knowingly supply funds to acquire such materials for such purposes.

**Section 20-153. Possession of graffiti implements by minors prohibited.**

It shall be unlawful for any person under the age of eighteen years to have in his or her possession any graffiti implement while upon public property or upon private property without the consent of the owner of such private property whose consent is given in advance and whose consent shall be given as to the person's presence while in possession of a graffiti implement. The foregoing provision shall not apply to the possession of felt tip markers by minors attending, or traveling to or from a school at which the person is enrolled, if the person is participating in a class at said school which formally requires the possession of felt tip markers. The burden of proof in any prosecution for violation of this section shall be upon the minor student to establish the need to possess a felt tip marker.

**Section 20-154. Possession of graffiti implements prohibited in designated public places.**

It shall be unlawful for any person to have in his or her possession any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or within one hundred feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the municipality.

**Section 20-155. Sale of graffiti implements to minors prohibited.**

No person or firm shall sell or cause to be sold to any person under the age of eighteen years, and no person under the age of eighteen years shall buy any graffiti implement as defined in Section 20-151. Evidence that a person, or

his/her employee or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any violation of this section. For purposes of this section, "bona fide evidence of majority" means a document issued by a federal, state, county, or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

**Section 20-156. Responsibilities of commercial establishments; signage required.**

Every person who operates a retail commercial establishment selling graffiti implements shall place a sign in clear public view at or near the display of such products stating; "Graffiti vandalism is against the law. Any person who vandalizes real or personal property with paint or any other liquid or device is guilty of a crime under the Code of Ordinances of Memphis, TN, Chapter 20, Article VII - Graffiti Vandalism."

**Section 20-157. Penalty.**

Any person who is found to have violated the ordinance codified in this chapter shall be assessed a penalty. Acts of graffiti vandalism are to be valued according to the provisions of T.C.A. § 39-11-106(a)(36) and punished as vandalism pursuant to T.C.A. § 39-14-408.

**Section 20-158. Parental civil liability.**

Any parent or legal guardian who consents to, permits, or otherwise knowingly allows her or his child under the age of eighteen (18) to possess a graffiti implement which is found to have been used to deface private or public property shall be personally liable for any and all costs to any person incurred in connection with the removal of graffiti caused by said child or by said graffiti implement.

**Section 20-159. Graffiti removal.**

A. The City of Memphis Division of General Services may use municipal funds to remove graffiti or other inscribed material from publicly owned real or personal property or privately owned real or personal property visible from publicly owned property and located within the City of Memphis and to replace or repair publicly owned property or privately owned property visible from publicly owned property within the city that has been defaced with graffiti or other inscribed material.

B. In removing, repairing or replacing the real or personal property pursuant to this section, the City of Memphis may use the services of persons ordered to perform those services by a general sessions, criminal or juvenile court.

C. The City of Memphis and its officers, employees, agents, volunteers and persons ordered to perform nuisance removal by a general sessions, criminal or juvenile court shall not be liable for any damages or loss of property:

1. Due to the removal of graffiti performed pursuant to the provisions of this section.

2. Due to the repair or replacement of the property performed pursuant to the provisions of this section.

3. Due to the failure by the municipality to remove, repair or replace property defaced by graffiti.

D. Every owner of real or personal property shall keep and cause to be kept such building free of all graffiti.

1. Subject to the availability of annual appropriations, the City of Memphis may provide graffiti removal services to abate graffiti on real or personal property without charge to the property owner if the property owner first executes a written consent and a waiver of liability.

2. Should the real or personal property owner fail to accept the city's graffiti removal services after the city has attempted in good faith to obtain written consent and a waiver of liability from the owner for such services, and the property owner fails to remove such graffiti within thirty (30) days of receiving a notice, the city may serve the owner a notice of nuisance abatement in the manner prescribed in this code.

#### **Section 20-160. Anti-graffiti trust fund.**

A. The City of Memphis hereby creates the city anti-graffiti trust fund. Fines and penalties against violators of this division shall be placed in the fund. The city shall direct expenditures of monies from the fund for the purposes of payment of the cost of graffiti removal and for such other public purpose as may be approved by resolution of the City Council.

B. The City of Memphis may also use city anti-graffiti trust fund or other municipal funds for anti-graffiti education and prevention.

*(Memphis City Beautiful, General Services??)* may operate a "hot line" for the purpose of receiving reports of unlawful application of graffiti on public or private property.

#### **Section 20-161. Reimbursement to municipality.**

In the event the person or persons responsible for the graffiti are convicted and the court orders the offender(s) to pay restitution for the cost of the clean up, and

the City of Memphis has expended funds to remove the graffiti, the restitution shall be directed to the city as reimbursement for the cost of the clean up.

**SECTION 2. BE IT FURTHER ORDAINED,** That the various sections of this Ordinance are severable, and that any portion declared unlawful shall not affect the remaining portions.

**SECTION 3. BE IT FURTHER ORDAINED,** that this ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.