

Your Committee, to which this proposal was referred, has amended the proposal to read as follows and recommends its adoption as amended.

CITY COUNTY COUNCIL

PROPOSAL NO. 52, 2013

CITY OF INDIANAPOLIS-MARION COUNTY, INDIANA

INTRODUCED: 02/11/2013

REFERRED TO: Rules and Public Policy Committee

SPONSOR: Councillors Miller, Barth, Adamson and Hickman

DIGEST: amends the Code to adopt new provisions within Chapter 575 regarding the elimination of graffiti

SOURCE:

Initiated by: Councillor Miller

Drafted by: Joseph W. Smith, Assistant Corporation Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: _____ Date: February 7, 2013

CITY-COUNTY GENERAL ORDINANCE NO. , 2013

PROPOSAL FOR A GENERAL ORDINANCE to amend the Revised Code to adopt new provisions within Chapter 575 regarding the elimination of graffiti.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Chapter 575 of the "Revised Code of the Consolidated City and County," regarding environmental public nuisances, hereby is amended by addition of a new Article II requiring removal of graffiti, to read as follows:

Sec. 575-201. Purpose and Intent.

It is the purpose of this Article to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property.

The City-County Council finds that graffiti, regardless of the content or nature of the material applied, is an environmental public nuisance and destructive of the rights and property values of neighboring property owners as well as the entire community. Graffiti is a visual symbol of disorder and lawlessness. It contributes to a downward spiral of blight and decay, decreasing property values, lessening business viability and adversely affecting tax revenues. When graffiti is not promptly removed or covered, other properties tend to become the target of graffiti, and entire neighborhoods are affected and become less desirable places to be, all to the detriment of the city.

The City-County Council intends, through the adoption of this Article, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement.

Sec. 575-202. Definitions.

As used in this Article, the following terms shall have the meanings ascribed to them in this section:

Abate or *Abatement* means the removal or complete covering of graffiti.

Aerosol paint means any color or pigment adapted or made for the purpose of being applied or sprayed to the surface of an object.

Authorized individual means a designee of the Director of the Department of Code Enforcement

Broad-tipped marker means any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth (1/4th) of an inch, containing ink or other pigmented liquid, that is not water soluble.

Department means the Department of Code Enforcement or its designee.

Etching equipment means any tool, device, or substance than can be used to make permanent marks on any natural or man-made surface. It shall not mean any key, silverware, gardening tool, or pocketknife.

Graffiti means any unauthorized inscription, word, figure, design, painting, writing, drawing or carving that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed ~~to any surface of public or private property on a component of any building, structure, or other facility by any graffiti implement, to the extent that the graffiti was not authorized in writing in advance by the owner or occupant of the property~~ visible from any public property, the public right-of-way, or from any private property other than the property on which it exists. There shall be a rebuttable presumption that such inscription, word, figure, painting, or other defacement is unauthorized. This article does not apply to easily removable chalk markings on the public sidewalks and streets.

Graffiti implements mean materials used or intended to be used to facilitate the placement of graffiti, including but not limited to, aerosol paint containers, broad-tipped markers, gum labels, paint sticks, graffiti sticks, engraving devices or creams, etching equipment, brushes, chemicals or any other implement capable of scarring or leaving a visible mark on any natural or manmade surface.

Manager means any person, not the record owner, who has possession and control of the property or who has the right to possession and control of the property. The term does not include a tenant or sub-tenant who merely occupies the property.

Owner means the record owner or owners as reflected by the most current records in the county assessor's office.

Paint stick or *graffiti stick* means a device containing a solid form of paint, wax, epoxy, or other similar substance capable of being applied to a surface by pressure, that is not water soluble, and upon application, leaving a mark at least one-sixteenth of an inch in width.

Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Recipient means the owner or ~~occupant~~ manager to whom notice of violation has been directed.

Sec. 575-203. Prohibited activity.

(a) It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any city-owned property or on any non-city-owned property.

(b) The existence of graffiti on public or private property in violation of this article is an environmental public nuisance.

(c) It is the duty of both the owner of the property to which the graffiti has been applied and any ~~person who may be in possession or who has the right to possess such~~ manager of the property to at all times to keep the property free of graffiti.

(d) It shall be unlawful for a recipient to fail to remove or cover completely all graffiti within thirty (30) days after the date of the notice described in section 575-204 of the Code.

Sec. 575-204. Determination of violation; notice of violation.

(a) Any department of the city that receives a complaint regarding property within the city that is defaced by graffiti shall forward that complaint to the Department of Code Enforcement, which shall make a record of, and assign a case number to, such complaint. An authorized individual shall visually inspect the property in question. If the authorized individual determines that the property has been defaced by graffiti, the Department shall issue a notice of violation to the owner if the Department intends to proceed under the provisions of Section 575-206 and, in the Department's sole discretion, to the ~~occupant~~ manager of the property.

(b) A notice of violation as described in subsection (1) shall be issued either by personal service or by first class United States mail, postage prepaid. The notice shall contain the following information:

- (1) The street address of the property;
- (2) The approximate location of the graffiti on such property;
- (3) A statement that the graffiti must be removed or covered completely within thirty (30) days after the date of the notice;
- (4) Information regarding graffiti abatement programs available through the city, if any; and
- (5) Information regarding the requirement for a Certificate of Appropriateness (COA) if the structure is protected by the Indianapolis Historic Preservation Commission or the Meridian Street Preservation Commission.

Sec. 575-205. Extensions for ~~occupied~~ managed or actively maintained properties.

If a notice of violation is issued under Section 575-204 to an ~~occupant~~ manager or to an owner if the property is unoccupied but being actively maintained, the person ~~occupying~~ managing or actively maintaining that property or the property owner may submit to the Department a written request for an extension of the time provided in Section 575-203 ~~(4)~~ (d) if compliance within that time will cause undue hardship. The Department ~~may~~ will establish the manner, method, and form in which such requests must be made. The Department ~~may~~ will also establish a policy to establish the criteria by which requests for extension of time may be approved.

Sec. 575-206. - Penalty

(a) The first violation of subsection ~~(4)~~ (d) of Section 575-203 in a twelve month period shall be subject to a fine in the amount established by Section 103-52 of this code. Any second or subsequent violation in a twelve month period shall be subject to the general enforcement provisions established in Section 103-3 of the Code.

(b) For the purposes of subsection ~~(4)~~ (a) of this Section, a violation shall be considered a second or subsequent violation whether it occurs on the same property as the first violation or on another property owned or occupied by the recipient. If a recipient fails or refuses to abate a violation within thirty (30) days after the imposition of a fine as provided in subsection ~~(4)~~ (a) of this Section, such continued failure or refusal shall also be considered a second or subsequent violation and be subject to the general enforcement provisions established in Section 103-3 of the Code.

(c) A violation of subsection ~~(4)~~ (a) of Section 575-203 is subject to the general enforcement provisions established in Section 103-3 of the Code.

(d) If there is no program in place to assist the recipient with the abatement, subsection (a) through (c) of this section shall be suspended until such program is in operation and available to the recipient.

Sec. 575-207. - Rules and regulations.

The board of code enforcement may, by resolution, promulgate rules and regulations necessary to implement and carry out the provisions of this Chapter.

SECTION 2. Section 103-52 of the "Revised Code of the Consolidated City and County," regarding the designated penalties for pre-payable citations is hereby amended by the addition of the underlined language and the deletion of the stricken through language, to read as follows:

Sec. 103-52. - Schedule of Code provisions and penalties.

The following Code (or ordinance) provisions and their respective civil penalties are designated for enforcement through the ordinance violations bureau:

Code Section	Subject Matter	Civil Penalty
293-321	Failure to file economic statement of interest—First offense	50.00
321-1	Swimming in unguarded waters—First offense in calendar year	50.00
361-108	Littering on premises of another	45.00
361-201	Vehicle losing its load—First offense in calendar year	50.00
391-302	Unlawful noise—First offense in calendar year	50.00
407-103	Loitering—First offense in calendar year	50.00
407-201	Unlawful fireworks use, ignition or discharge—First offense	\$100.00
431-108	Parking prohibited for street repairs and cleaning	20.00
431-314	Premises address violation—Second offense in calendar year	25.00
431-602	Bicycles—Second violation in a twelve-month period regarding children under twelve	50.00
431-603	Unlawful operation of bicycle—First violation in a twelve-month period	50.00
431-604	Unattended bicycle or bicycle not in operation—First violation in a twelve-month period	50.00
431-604	Unattended bicycle or bicycle not in operation—Second violation in a twelve-month period	100.00
431-604	Unattended bicycle or bicycle not in operation—Third violation in a twelve-month period	200.00
431-702	Prohibited activity in roadways—First violation in twelve-month period	25.00
431-703	Interference with vehicular traffic—First violation in twelve-month period	25.00
441-108	Pedestrian violations	12.50
441-214	Parking when temporarily prohibited	20.00
441-318	Unlawful use of horn or sounding device	15.00
441-374	Bicycle path or lane—First violation in a twelve-month period	50.00
441-363	Unlawfully parked trailer	20.00
441-407	Display of unauthorized traffic controls	15.00
441-408	Interference with traffic control devices	15.00
441-503	Consumption or possession by operator of motor vehicle—First offense in calendar year	50.00

441-504	Operating motor vehicle containing open alcoholic beverages—First offense in calendar year	50.00
511-702	Open burning	50.00
531-102	Animal at large—First offense in twelve-month period	50.00
531-202	No dog or cat permanent identification—First offense	50.00
531-202	No dog or cat permanent identification—Second and subsequent offenses	100.00
531-301	No dog or cat antirabies vaccination—First offense	100.00
531-302	No antirabies vaccination tag on dog or cat—First offense in twelve-month period	25.00
531-302	No antirabies vaccination record for feral cat colony—First offense in twelve-month period	25.00
<u>575-206</u>	<u>Violation of graffiti ordinance</u>	<u>50.00</u>
611-403	Unlawful loading or unloading of private bus	15.00
611-501	Unlawful stopping of food vendor vehicle	15.00
611-502	Violation of noise restriction on food vendors	15.00
611-504	Failure of food vending vehicle to display required warnings	15.00
611-506	Unlawful vending from other than curbside of vending vehicle	15.00
616-402	Violation of restrictions on smoking in certain areas	100.00
621-106	Unlawful parking on sidewalk, in crosswalk, or adjacent yard	25.00
621-107	Unlawful parking in certain school areas	20.00
621-108	Unlawful manner of parking	20.00
621-109	No required lights on certain parked vehicles	20.00
621-110	Violation of handicapped parking restrictions	100.00
621-111	Unlawful parking in handicapped parking meter zone	100.00
621-112	Unloading perpendicular to curb without permit	20.00
621-113	Unlawful use of bus stops and taxicab stands	20.00
621-114	Unlawful use of passenger and loading zones	20.00
621-115	Unlawful parking adjacent to certain buildings	20.00
621-116	Unlawful parking for display for sale or advertising	20.00
621-117	Unlawful parking for more than six (6) hours	20.00
621-118	Unlawful parking of commercial vehicles at night	20.00
621-119	Unlawful parking in alleys or on certain narrow streets	20.00
621-120	Unlawful parking in designated special parking areas	20.00
621-121	Parking on certain streets where prohibited at all times	20.00
621-122	Stopping, standing or parking on streets where prohibited at all times	20.00
621-123	Parking on certain streets where prohibited at all times on certain days	20.00
621-124	Parking on certain streets when prohibited at certain times on certain days	20.00
621-125	Stopping, standing or parking during prohibited hours on certain days on certain streets	25.00
621-126	Parking longer than permitted on certain streets at certain times on certain days	20.00
621-127	Unlawful outdoor storage of inoperable motor vehicle—First offense in a twelve-month period	50.00

621-127	Unlawful outdoor storage of inoperable motor vehicle—Second offense in a twelve-month period	250.00
621-128	First violation in twelve-month period	50.00
621-128	Second violation in twelve-month period	100.00
621-221	Parking in parking meter space when prohibited	20.00
621-226	Parking in excess of maximum time permitted in parking meter space	20.00
621-227	Expired parking meter	20.00
621-306	Unlawful parking during snow emergency	25.00
621-404	Leaving taxicab unattended	20.00
621-405	Unlawful parking in certain mailbox zones	20.00
621-430(a)	Unlawful use of loading zone in Regional Center by non-eligible vehicle	25.00
621-430(b)	Unlawful use of loading zone in Regional Center—Non-permitted use	25.00
621-430(c)	Unlawful use of loading zone in Regional Center in excess of posted time limits	25.00
621-430(d)	Unlawful obstructing traffic in the Regional Center	25.00
621-430(e)	Unlawful parking in alleys or on certain narrow streets in the Regional Center	25.00
621-501	Unlawful stopping, standing or parking near fire hydrant	75.00
621-502	Unlawful obstruction of fire lane	75.00
631-102	In park after hours—First offense in calendar year	50.00
631-109	Alcohol in park—First offense in calendar year	50.00
645-528	Skateboard or similar play device—First offense in calendar year	50.00
706-105	Water conservation violation—First offense in twelve-month period	100.00
706-105	Water conservation violation—Second offense in twelve-month period	250.00
730-505	Civil zoning violations—First offense in calendar year	50.00
811-214	Alarm business failure to report monitoring information	100.00
811-311	First false alarm in calendar year after a year in which a warning was issued	25.00
811-311	Second false alarm in same calendar year as warning	25.00
811-311	Second false alarm in all other calendar years	50.00
811-311	Third false alarm in same calendar year as warning	50.00
811-311	Third false alarm in all other calendar years	75.00
811-311	Fourth false alarm in same calendar year as warning	75.00
811-311	Fourth false alarm in all other calendar years	100.00
811-704	Second faulty fire alarm in twelve-month period	25.00
811-704	Third faulty fire alarm in twelve-month period	50.00
811-704	Fourth faulty fire alarm in twelve-month period	75.00
875-702	Construction activity without required license, listing or registration—First offense in twelve-month period	250.00
Ch. 895	Horse-drawn carriage violation—First offense in twelve-month period	100.00
Ch. 903	Pedal cab violation—First offense in twelve-month period	100.00
931-305	Excessive parking charge at commercial parking facility—First offense in twelve-month period	100.00
996-77	No monthly taxicab certificate—First offense in twelve-month period	25.00
996-123	Failure to maintain public vehicle for hire—First offense in twelve-month period	25.00

996-124	Taxicab operator dress code violation—First offense in twelve-month period	25.00
996-126	Failure to display licenses or fare schedule—First offense in twelve-month period	25.00
996-138	Taxicab operator exceeding limitation on hours—First offense in twelve-month period	25.00

SECTION 3. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 4. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14 or from ~~July 1 October 1, 2013~~ April 1, 2014, whichever shall later occur.

The foregoing was passed by the City-County Council this ____ day of _____, 2013, at ____ p.m.

ATTEST:

Maggie A. Lewis
President, City-County Council

NaTrina DeBow
Clerk, City-County Council

Presented by me to the Mayor this ____ day of _____, 2013, at 10:00 a.m.

NaTrina DeBow
Clerk, City-County Council

Approved and signed by me this ____ day of _____, 2013.

Gregory A. Ballard, Mayor