

Section 430 – Graffiti
(Added, Ord. No. 08-11)

430.01. Findings and purpose. Subdivision 1. The Robbinsdale city council is enacting this section to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property.

Subd. 2. The city council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Graffiti perpetrators are often associated with other criminal activities, including violent crimes. Unless the city acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city.

Subd. 3. The city council intends, through the adoption of this section, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement of public and private property. The council does not intend for this chapter to conflict with any existing anti-graffiti state laws or “criminal damage to property” laws.

430.03. Definitions. For the purposes of this section, the terms defined in this subsection have the meanings given them.

“Aerosol paint container” means any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.

“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 of an inch, containing ink or other pigmented liquid that is not water soluble.

“Etching equipment” means any tool, device, or substance that can be used to make permanent marks on any natural or man-made surface.

“Graffiti” means any unauthorized inscription, word, figure, painting, symbol, or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or despite advance authorizations otherwise deemed a public nuisance by the city council.

“Graffiti implement” means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

“Paint stick or 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 leaving a mark of at least one-fourth of an inch in width.

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

430.05. Prohibited acts. Subdivision 1. Defacement. It is unlawful for any person to apply graffiti to any natural or human-made surface on any publicly owned property or, without the permission of the owner or occupant, on any privately owned property.

Subd. 2. Possession of graffiti implements. Unless otherwise authorized by the owner or occupant, it is unlawful for any person to possess any graffiti implement while:

- (a) Within 200 feet of any graffiti located in or on a public facility, park, playground, swimming pool, recreational facility, bridge, or other public building or structure owned or operated by a governmental agency; or
- (b) Within 200 feet of any graffiti located in any public place or on private property, between the hours of 10:00 p.m. and 5:00 a.m.

Subd. 3. Minors at or near school facilities. It is unlawful for any person under the age of 18 years to possess any graffiti implement while on or in any school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provision of this subsection does not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers. The burden of proof in any prosecution for violation of this subsection is upon the minor student to establish the need to possess a broad-tipped marker.

430.07. Graffiti as nuisance. Subdivision 1. Declaration. The existence of graffiti on public or private property in violation of this chapter is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this chapter.

Subd. 2. Duty of property owner. 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 property to at all times keep the property clear of graffiti.

Subd. 3. Repeat violations. If a property is subject to three or more occurrences of graffiti within a year, application of anti-graffiti material of a type and nature that is acceptable to the city may be required for each of the publicly viewable surfaces after notification by the city, or imposed during improvements or construction activities to the site as determined by the city.

430.09. Removal of graffiti. Subdivision 1. By perpetrator. The city may require any person applying graffiti on public or private property to either remove or pay for all costs for removal of the graffiti within 24 hours after notice by the city or property owner. The removal must be performed in a manner prescribed by the city, with materials and colors compatible with existing surfaces, and to a comparable or improved condition before the graffiti application as determined by the city. Where graffiti is applied by a person under 18 years old, the parents or legal guardian will also be responsible for such removal or for payment for the costs of removal. Failure of any person to remove graffiti or pay for the removal will constitute an additional violation of this chapter.

Subd. 2. By property owner or city. In lieu of the procedure set forth in subdivision 1, the city may order that the graffiti be removed by the property owner or any person who may be in possession or who has the right to possess such property, pursuant to the nuisance abatement procedure herein. Graffiti removal and corrections must be performed with materials and colors compatible with existing surfaces as determined by the city. If the property owner or responsible party fails to remove offending graffiti within the time specified by the city, the city may commence abatement and cost recovery proceedings for the graffiti removal in accordance with this section.

Subd. 3. Right of entry on private property. Prior to entering upon private property or property owned by a public entity other than the city for the purpose of graffiti removal, the city must attempt to secure the consent of the property owner or responsible party and a release of the city from liability for property damage or personal injury. If the responsible party fails to remove the offending graffiti within the time specified by this section, or if the city has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the city and consistent with the terms of this section, the city will commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

430.11. Abatement procedure. Subdivision 1. Abatement by city. If the owner, occupant, or other responsible party does not comply with the notice within the time specified, the city may abate the public nuisance.

Subd. 2. Notice and hearing. The following notification must be conducted prior to city abatement of the public nuisance. Whenever it is determined that a public nuisance is being maintained or exists on a property, the city manager or authorized designee must give ten days' written notice through service by mail, by posting a notice on the property, or by personal delivery to the owner of or person in control of the property on which the public nuisance is located. When the property is occupied, service upon the occupant is deemed service upon the owner. Where the property is unoccupied or abandoned, service may be by mail to the last known owner of record of the property or by posting on the property and upon all lienholders of record if so required by state law. The notice must state:

- (a) A description of the public nuisance;
- (b) That the public nuisance must be corrected within ten days of the service of the notice;
- (c) That if the public nuisance is not properly removed or corrected as ordered, the public nuisance will be abated by the city and the costs of abatement will be specially assessed to the property taxes; and
- (d) That the owner of or person in control of the property on which the public nuisance is located may in writing request a hearing before the city manager or authorized designee.

Subd. 3. Hearing, action. If a hearing is requested during the ten-day period, the city manager or authorized designee must promptly schedule the hearing, and no further action on the abatement of the public nuisance may be taken until the city manager's decision is rendered. The property owner or responsible party may present evidence and argue the property does not constitute a public nuisance. At the conclusion of the scheduled hearing, the city manager or authorized designee may cancel the notice to remove or correct the public nuisance, modify the notice, or affirm the notice to remove or correct the public nuisance. If the notice is modified or affirmed, the public nuisance must be disposed of in accordance with the city's written order. Any written order shall be served upon the property owner or responsible party in the same manner as set forth in subsection 430.11, subdivision 2.

Subd. 4. Use of public funds. Whenever the city becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the city is authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but will not authorize or undertake to provide for the painting or repair of any more extensive area than that where the graffiti is located, unless the city manager or the designee of the city manager determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

430.13. Summary abatement. Subdivision 1. The enforcing officer may provide for abating a public nuisance without following the procedure required in subsection 431.11, subdivisions 2 and 3 when:

- (a) There is an immediate threat to the public health or safety;
- (b) There is an immediate threat of serious property damage;
- (c) A public nuisance has been caused by private parties on public property; or
- (d) Any other condition exists that violates state or local law and that is a public health or safety hazard.

Subd. 2. A reasonable attempt must be made to notify the owner, occupant, or other responsible party of the intended action and the right to appeal the abatement and cost recovery at the next regularly scheduled city council meeting.

Subd. 3. Right of entry on private property. For summary abatement proceedings, the city may enter upon private property or property owned by a public entity other than the city and commence abatement and cost recovery proceedings for the graffiti removal.

430.15. Cost recovery. Subdivision 1. The owner of property on which a nuisance has been abated by the city, or a person who has caused a public nuisance on property not owned by that person, is personally liable to the city for the cost of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, city staff will prepare a bill for the cost and mail it to the owner or other responsible party. The amount is immediately due and payable to the city.

Subd. 2. Assessment. If the cost, or any portion of it, has not been paid within 30 days after the date of the bill, the council may certify the unpaid cost against the property to which the cost is attributable in accordance with the process set forth in subsection 2021.01, subdivision 3 of this code.

430.17. Penalties. Subdivision 1. Any violation of this section is a misdemeanor, punishable in accordance with state law.

Subd. 2. Any violation of this section may be subject to civil penalties in accordance with section 306 of this code.

Subd. 3. Minors. In the case of a minor, the parents or legal guardian is jointly and severally liable with the minor for payment of all fines. Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents' or legal guardian's property that includes the fine and administrative costs.

Subd. 4. This chapter is not intended to prohibit a private property owner from seeking additional penalties or remedies.