

STATE OF GEORGIA
CITY OF HAPEVILLE

ORDINANCE NO. 2017-10

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF HAPEVILLE, GEORGIA; ADDING CODE SECTION 26-2-40 TO PREVENT GRAFFITI AND PROMOTE ITS ERADICATION; TO PROVIDE SEVERABILITY; TO PROVIDE PENALTIES; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR ADOPTION AND EFFECTIVE DATE; TO PROVIDE FOR CODIFICATION; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community and promotes blight in the neighborhoods in which it occurs and encourages similar acts of vandalism;

WHEREAS, without prompt removal of graffiti, other properties become the target of graffiti and entire neighborhoods are affected and become less desirable places in which to live and work;

WHEREAS, the City of Hapeville, in the interest of public health, safety, and welfare, find and declare that to be truly effective in the deterrence, eradication, and removal of graffiti, it is necessary to implement a comprehensive anti-graffiti ordinance.

BE IT AND IT IS HEREBY ORDAINED by the Mayor and Council of the City of Hapeville and under the authority thereof.

Section 1.

That the Code of Ordinances, City of Hapeville, Georgia is hereby amended by deleting Section 26-2-40 in its entirety and adding a new section to be numbered 26-2-40, which said section reads as follows:

“Sec. 26-2-40

(1) *Definitions.* The following words, terms, and phrases, when used in this section shall have the following meanings ascribed to them:

Aerosol paint container means any canister, can, bottle, container, or other receptacle which contains any substance commonly known as paint, stain, dye, and/or any other pigmented substance which is and/or can be modified to contain pressure, or be pressurized, in order to impel and/or propel any such substance.

Etcher means any tool, device, instrument, and/or mechanism including, but not limited to, any tool, device, instrument, or mechanism commonly known as "glass etcher," "metal etcher," "cutting instrument," or "drill bit," that can be applied by pressure or contact with any surface to cause markings on said surface.

Graffiti means any unauthorized inscription, symbol, design, word, figure, painting, and/or other defacement that is written, drawn, scribed, etched, marked, painted, stained, scratched, sprayed, engraved, stuck on or affixed to any surface, public or private.

Graffiti implement means an aerosol paint container, marker, paint stick, etcher, brush, gum label, or any other instrument or device capable of scarring or leaving a visible mark on any natural or manmade surface.

Gum label means any substance consisting of a material such as, but not limited to, paper, fabric, cloth, plastic, vinyl, and/or any other similar material, where the material also contains one or more surfaces containing a substance such as, but not limited to, any material commonly known as an adhesive or glue, which cannot be removed from the surface in an intact condition and with minimal efforts, including, but not limited to, decals, stickers, patches, stamps, or labels.

Marker means any implement commonly known as an indelible or permanent-ink marker and/or marking pen and/or any other similar implement which contains any pigmented substance including, but not limited to, ink or any other substance which cannot be easily and completely removed with water after said substance has dried and where the width of the marking is one-sixteenth of one inch or greater.

Paint stick means any device which contains any substance, solid or liquid, including, but not limited to, any form of any substance commonly known as paint, ink, chalk, wax, epoxy, and/or any other similar substance, which can be applied to any surface by such means as applying pressure to and/or contacting any surface in such a way as to leave any visible mark measuring at least 1/16 of one inch at any point.

(2) *Prohibition of graffiti placement.* It shall be unlawful for any person to place or apply graffiti to any public or private property.

(3) *Prohibition of possession of graffiti implements.*

(a) It shall be unlawful for any person to possess any graffiti implement while in, on, at, or about any private property without the owner's or occupant's permission.

(b) It shall be unlawful for any person to possess any graffiti implement while in, on, at, or about any public property, including, but not limited to, city hall, the Hapeville War Memorial, fire departments, the police department, public works, public parks, playgrounds, swimming pools, recreational facilities, schools, school grounds, libraries, court houses, utility stations, storm drains, or any other publicly owned, operated, and/or maintained facility. Exceptions to this subsection are as follows:

(i) Any minor who is enrolled in an education class which requires possession of any graffiti implement for use in such education class may possess such graffiti implement at the school and on the school grounds of such education class provided the minor is authorized to do so by a school official or the minor has written consent from his or her parent or lawfully designated guardian, dated and signed; and

(ii) Any officer, employee, or agent of the public entity that owns the public property may possess graffiti implement thereon if such possession of the graffiti implement is authorized by the public entity.

(c) This section does not apply to prohibit the possession of graffiti implements on public sidewalks or streets.

(4) *Graffiti placement and possession penalties.* Any person who is convicted of placing or possessing graffiti in violation of subsections (2) or (3) shall be punished by a fine not to exceed \$1,000.00 or by imprisonment not to exceed six months, or both such fine and imprisonment in accordance with section 1-1-8 of the Hapeville Code of Ordinances. Additional fines and/or imprisonment may be assessed for any conviction related to public property as outlined in subsection (3). The court may suspend or probate a portion or its entire sentence upon such conditions to include, but not limited to, restoring the property so defaced, damaged, or destroyed, paying restitution to the person or entity that paid for the restoration of the property so defaced, damaged, or destroyed, or other remedial action.

(5) *Removal of graffiti.*

(a) It shall be unlawful for the owner of any property to permit property that is defaced with graffiti to remain so defaced for a period in excess of 7 days after written notice is given. In the event the period for removal will exceed 7 days, a reasonable plan of action shall be submitted by the property owner within three days of written notice.

(b) Whenever the city becomes aware of the existence of graffiti on any property, a police officer or code enforcement officer shall give or cause to be given written notice to the property owner to remove such graffiti therefrom.

(c) The notice required by this section may be served by personal service or registered or certified mail addressed to the owner or the last known address of said owner. If this address is unknown, the notice shall be sent to the property address. Such notice shall allow 7 days from the date of notice for removal of the identified graffiti or 3 days from the date of notice to provide a reasonable plan of action.

(d) For the purposes of giving notice to the owner of the property, the person shown as the owner of said property on the tax records of the city shall be sent such notice at the address shown thereon unless the city receives actual notice that another person owns said property. In addition, the owner of the property may notify the city that the tenant, pursuant to a written lease, has control of the property or has control of that portion of the building on which the graffiti is located and, in the event the city receives such notice, the city shall notify the tenant of the notice of removal as provided in this section and proceed against the tenant and not the owner.

(e) A property owner or tenant that has received proper notice of the presence of graffiti on the property as set forth above shall have 7 days from the date of that written notice to remove the graffiti themselves or through the use of a third party or 3 days from the date of that written notice to provide a reasonable plan of action.

(6) *Penalties for failure to remove graffiti.*

(a) Any property owner or tenant who fails to remove the graffiti prior to the expiration of the 7 days following the written notice provided or fails to provide a reasonable plan of action prior to the expiration of the 3 days from the date of the written notice pursuant to subsection (5) is in violation of this section.

(b) Upon a property owner's or tenant's failure to remove the graffiti before the expiration of the 7 days following the written notice or failure to provide a reasonable plan of action prior to the expiration of the 3 days from the date of the written notice as provided pursuant to subsection (5), the city may take any necessary action to remove, repaint, or repair the graffiti-damaged property and may use public funds for such action, the cost of which shall be a lien on the property served. Nothing in this section shall be construed to require the city to undertake such repair, repainting, or removal.

(c) Any property owner or tenant who is found guilty of violating subsection (a) shall be subject to a fine not to exceed \$1000.00 for each seven-day period past the expiration of the 7 day period that the graffiti remains on the property or for each seven day period past the expiration of the 3 day period to provide a reasonable plan of action. Said fines shall not exceed the limits set forth in section 1-1-8 of the Hapeville Code of Ordinances.”

Section 2.

a. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

c. In the event that any phrase, clause, sentence, or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality, or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs, and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 3.

All Ordinances and parts of Ordinances in conflict herewith are hereby expressly repealed.

Section 4.

This Ordinance shall become effective upon its adoption by the Mayor and Council.

Section 5.

The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 6.

The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City of Hapeville.

Section 7.

It is the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances, City of Hapeville, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.


SO ORDAINED, this 16 day of May, 2017.

CITY OF HAPEVILLE, GEORGIA




Alan Hallman, Mayor

ATTEST:



Jennifer Elkins, City Clerk

APPROVED AS TO FORM:



Steven M. Fincher
Attorney for City of Hapeville