

**ORDINANCE NO. (O) 10-12**

**AN ORDINANCE OF THE TOWN OF ORO VALLEY ARIZONA, ADOPTING A NEW ORO VALLEY TOWN CODE CHAPTER 10, OFFENSES, ARTICLE 10-6, ANTI-GRAFFITI, AND REPEALING THE CURRENT ARTICLE 10-6; REPEALING ALL RESOLUTIONS, ORDINANCES AND RULES OF THE TOWN OF ORO VALLEY IN CONFLICT THEREWITH; PRESERVING THE RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS THAT HAVE ALREADY BEGUN THEREUNDER**

**WHEREAS**, the Town of Oro Valley is a political subdivision of the State of Arizona vested with all associated rights, privileges and benefits and is entitled to the immunities and exemptions granted municipalities and political subdivisions under the Constitution and laws of the State of Arizona and the United States; and

**WHEREAS**, on March 20, 2002, the Mayor and Council approved Ordinance No. (O) 02-07, which adopted that certain document entitled Chapter 10, Offenses, Article 10-6, Anti-Graffiti; and

**WHEREAS**, the current Article 10-6, Anti-Graffiti, allows a response time that could take up to one month or more to abate and eradicate graffiti; and

**WHEREAS**, studies have shown that immediate removal of all graffiti tends to slow down offenders from placing graffiti in areas which subscribe to swift removal of any and all graffiti; and

**WHEREAS**, the Mayor and Council desire to adopt the new Article 10-6, Anti-Graffiti, that will allow the Town to respond without delay for swift abatement and eradication of graffiti within the Town.

**NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Oro Valley, Arizona that:**

**SECTION 1.** The existing Chapter 10, Offenses, Article 10-6, Anti-Graffiti, of the Oro Valley Town Code is hereby repealed.

**SECTION 2.** That certain document entitled Chapter 10, Offenses, Article 10-6, Anti-Graffiti, of the Oro Valley Town Code, attached hereto as Exhibit "A" and incorporated herein by this reference and declared a public record on October 20, 2010 is hereby adopted.

**SECTION 3.** All Oro Valley ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the Council in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 4.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Oro Valley, Arizona this 20 day of October, 2010.

**TOWN OF ORO VALLEY**

  
Dr. Satish I. Hiremath, Mayor

**ATTEST:**

  
Kathryn E. Cuvelier, Town Clerk

Date: 10.22.10

**APPROVED AS TO FORM:**

  
Tobin Rosen, Town Attorney

Date: 10/20/10

**PUBLISH:** DAILY TERRITORIAL  
NOVEMBER 1, 2, 3, 4, 2010

**POSTED:** 10/25/10 - 11/25/10

# EXHIBIT "A"

## Article 10-6 ANTI-GRAFFITI

### Sections:

- 10-6-1 Purpose Statement
- 10-6-2 Definitions
- 10-6-3 Prohibited Acts
- 10-6-4 Accessibility to Graffiti Implements
- 10-6-5 Penalties for Perpetrator
- 10-6-6 Removal of Graffiti by Perpetrator
- 10-6-7 Removal of Graffiti on Property by Owner or Town
- 10-6-8 Prevention Provisions

### **10-6-1 Purpose Statement**

The Town of Oro Valley is dedicated to providing Oro Valley Residents with a safe and clean environment. Graffiti vandals jeopardize the integrity of this community and its residents. Oro Valley has a direct interest in expeditiously eradicating graffiti on all property within the town limits. Studies have shown that an immediate removal of all signs of graffiti is necessary.

### **10-6-2 Definitions**

For the purposes of this Code, the following words shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

A. **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.

B. **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.

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

D. **Graffiti** means any unauthorized inscription, word, figure, painting 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 authorization, is otherwise deemed a public nuisance by the Town Council.

E. **Graffiti implement** means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, or brush.

F. **Paint stick or graffiti** 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-eighth (1/8th) of an inch in width.

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

- H. **Public Property** means any asset owned by the Town of Oro Valley
- I. **Residential Property** means a building, walls and structures surrounding or attached to property whose main purpose is for a place of dwelling or home.
- J. **Commercial Property** means buildings, walls, structures intended to generate a profit either from capital gain or rental income
- K. **Utility Company** means public or privately owned electricity, natural gas, water, sewer, and/or communications companies.
- L. **Cover graffiti** means to conceal graffiti with paint in lieu of removal of graffiti.
- M. **Remove graffiti** means to eradicate by means of hydro-blasting or by using a chemical component or combination of techniques to remove graffiti.

**10-6-3 Prohibited Acts**

A. Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any Town-owned property or, without the permission of the owner or occupant on any private property.

B. Possession of Graffiti Implements.

1. By Minors at or Near School Facilities. It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on 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 provisions of this Section shall not apply to the possession of broad-tipped markers or other instruments by a minor attending or traveling to or from 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 or other such instruments. 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 broad-tipped marker.

2. In Designated Public Places. It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the Town or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the Town.

**10-6-4 Accessibility of Graffiti Implements**

A. Furnishing to Minors Prohibited. It shall be unlawful for any person, other than a parent or legal guardian to sell, exchange, give, loan, or otherwise furnish, or cause to permit to be exchanged, given, loaned, or otherwise furnished, any aerosol paint container, broad-tipped marker, or paint stick to any person under the age of eighteen (18) years without the written consent of the parents or guardian of the person.

B. Display and Storage.

1. Every person who owns, conducts, operates, or manages a retail commercial establishment selling aerosol paint containers, paint sticks, or broad-tipped markers shall store the containers, sticks, or markers in an area continuously observable, through direct visual observation of surveillance

equipment, by employees of the retail establishment during the regular course of business.

2. In the event that a commercial retail establishment is unable to store the aerosol paint containers, paint sticks, or broad-tipped markers in an area as provided above, the establishment shall store the containers, sticks, and markers in an area not accessible to the public in the regular course of business without employee assistance.

C. Signage Required.

Every person who operates a retail commercial establishment selling graffiti implements shall:

1. Place a sign in clear, public view or near the display of such products stating: "Graffiti is against the law. Any person who defaces real or personal property with paint or any other liquid or device is guilty of a crime punishable by imprisonment of up to 180 days and/or a fine up to \$2,500.00"

2. Place a sign in the direct view of such persons responsible for accepting customer payment for graffiti implements stating: "Selling spray paint, paint sticks, or broad-tipped markers to persons under 18 years of age is against the law and punishable by a fine of \$2,500.00."

### 10-6-5 Penalties

A. Fines and Imprisonment. Any person violating this Code shall be punished by a fine of not less than one hundred dollars (\$100.00) for the first offense; five hundred dollars (\$500.00) for the second offense; and one thousand dollars (\$1,000.00) for each subsequent offense, or by imprisonment in jail or probation or by both fine and imprisonment and probation at the discretion of the court.

1. In the case of a minor, the parents or legal guardian shall be jointly and severably liable with the minor for payment of all fines.

2. Failure of the parents or legal guardian to make payment may result in the filing of a lien on the parent's or legal guardian's property that includes the fine and administrative costs.

3. Upon an application and finding of indigence, the court may decline to order fines against the minor, parents or guardian.

B. Restitution. In addition to any punishment specified in this Section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case of a minor, the parents or legal guardian shall be ordered jointly and severably liable with the minor to make the restitution.

C. Forfeiture of Personal Property. All personal property, including, but not limited to, automobiles, motorcycles and bicycles, used or intended to be used in violating this Code may be forfeitable to the Town. In forfeiting such personal property, the Town may follow the procedures outlined in State statutes concerning forfeitures of personal property. In any forfeiture proceeding under this Section, the court shall not order forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by the Arizona and United States constitutions.

D. Community Service. In lieu of, or as part of, the penalties specified in this Section, a minor or adult may be required to perform community service as described by the court based on the following minimum requirements:

1. The minor or adult shall perform as least thirty (30) hours of community service within the Town boundaries of Oro Valley.
2. At least one parent or guardian of the minor may be in attendance a minimum of fifty percent (50%) of the period of assigned community service.
3. The entire period of community service shall be performed under the supervision of a community service provider.
4. Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have a rehabilitative effect on the minor or adult, including community service that involves graffiti removal.
5. Any minor determined to be a ward of the court under Arizona State law as a result of committing an offense in the town shall be required, at the Town's option, to perform community service, including graffiti removal service of not less than thirty (30) hours nor more than eighty (80) hours.

E. Civil Responsibility for Damages for Wrongful Sale, Display or Storage. Any person who sells, displays or stores, or permits the sale, display or storage, of graffiti implements in violation of the provisions of this Code shall be liable for all costs, including attorney's fees and court costs, incurred by any party in connection with the removal of graffiti, or such party's prosecution of a civil claim for reimbursement or damages resulting from such graffiti removal or property repair, arising from the use by any person of such wrongfully sold, displayed or stored graffiti implement in violation of the provisions of this Code, provided that such liability shall not exceed two thousand five hundred dollars (\$2,500.00).

#### **10-6-6 Removal of Graffiti by Perpetrator**

Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the Town or private owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of Police, the Town Engineer, or any Town department head, as authorized by the Town Council. Any person applying graffiti shall be responsible for the removal or for payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this Code. ~~Where an un-emancipated minor applies graffiti, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.~~

#### **10-6-7 Removal of Graffiti on Property by Owner or Town**

Once graffiti is identified, the Town will notify the owner of the defaced property that the Town will be sending a graffiti abatement team to eradicate the graffiti within five (5) business days unless it is eradicated sooner by the property owner.

#### **10-6-8 Prevention Provisions**

A. **Design of Potential Graffiti-Attracting Surfaces.** Any applicant for development review approval, conditional use permit, special use permit, unclassified use permit, development agreement, or other form of development or building permit shall, to the extent feasible, have designed any building structures visible from any public or quasi-public place in such a manner to consider prevention of graffiti, including, but not limited to the following:

1. Use of a protective coating to provide for the effective and expeditious removal of graffiti;

2. Use of additional lighting;
3. Use of non-solid fencing;
4. Use of landscaping designed to cover large expansive walls, such as ivy or similar clinging vegetation; or
5. Use of architectural design to break up long continuous walls or solid areas.

**B. Design of Existing Graffiti-Attracting Surfaces;**

1. **At Owner's Expense.** Any surface of a structure on a parcel of land that has been defaced with graffiti equal to or more than five (5) times in twelve (12) months shall be declared a public nuisance and required to be retrofitted, at the cost of the property owner, with features or qualities as may be established by the Town as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti. In exercising the authority hereunder, the Town may not impose a cost on the property owner of greater than two thousand five hundred dollars (\$2,500.00).

2. **At Town's Cost.** The owner of property containing a surface that has been defaced with graffiti equal to or more than five (5) times in twelve (12) months shall permit the Town at the Town's discretion, to enter the property and, at the Town's cost, make modifications as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti if the Town chooses to do so.