

# 14B.80.040 Procedures.

(Amended by Ordinance 178352, effective May 28, 2004.)

**A. Required Graffiti Removal.** The owner or occupant of any property in the City shall remove any graffiti from such property within ten (10) days of the graffiti's appearance.

**B. Notification**

1. Whenever the Manager determines that graffiti exists on any structure in the City of Portland, the Manager may issue an abatement notice.
2. The Manager shall cause the notice to be served upon the property owner and any occupant. The owner or occupant shall have ten (10) days after the date of service of the notice in which to remove the graffiti. The Graffiti Abatement Manager shall have the sole discretion to grant the property owner the option of giving the City written permission to enter on the property and remove the graffiti.
3. Service shall be accomplished by addressing the notice to the owner and occupant and sending it by personal service, registered mail or certified mail. Service on the occupant may also be accomplished by posting the notice in a clearly visible location on the subject property.
4. If graffiti is not removed or written permission is not given to the City to remove the graffiti, the costs of removal may be assessed to the owner and will become a lien on the affected property. For each instance of graffiti abatement, the Manager shall keep an accurate account of all expenses incurred, including an overhead charge of 25 percent for program administration and a civil penalty of \$250 for each abatement. In the event that the measures taken are deemed by the Code Hearings Officer to be appropriate, the cost for the same may be made as an assessment lien upon the property.

**C. Appeal**

1. Within ten (10) days of the receipt of the notice, the property owner or occupant may appeal the notice from the Manager to the Code Hearings Officer of the City of Portland, as set out in Chapter 22.10 of this Code.
2. Upon receipt of the appeal request, the Code Hearings Officer shall set the matter for hearing within ten (10) business days. If the Code Hearings Officer finds the property to be a Graffiti Nuisance Property, and the owner or responsible party has been given notice in accordance with Subsection B. above, the Code Hearings Officer shall specify when and under what conditions the graffiti shall be abated.

**D. Removal of Graffiti**

1. The Manager may summarily abate any graffiti on any utility poles and cabinets, on exterior walls and fences immediately abutting public streets or property, or on any public property, including but not limited to traffic signs and lights.
2. Whenever the Manager has reasonable cause to believe that there exists upon any building or structure any graffiti requiring abatement under this Chapter, the Manager may enter upon the graffiti nuisance property at all reasonable times to perform any duty imposed on the Manager under this Chapter, and to enforce the provisions of this Chapter. Upon the failure to comply with the notice of abatement by the designated compliance date, and if the property owner or occupant has not appealed the notice as provided under Subsection C., the following steps may be taken if the graffiti nuisance property is plainly enclosed to create privacy and prevent access by unauthorized persons:
  - a. If the graffiti nuisance property is occupied, the Manager shall first present proper credentials and demand entry to cause the graffiti to be abated. If entry is refused, the Manager may attempt to secure entry by any legal means.
  - b. If the graffiti nuisance property is unoccupied, the Manager shall first make a reasonable attempt to locate the owner or occupant and demand entry. Such demand may be included in the initial notice sent to the owner or occupant under Subsection B. above. If entry is refused, the Manager may attempt to secure entry by any legal means.

**(1)** If the Manager has first obtained an administrative search warrant to secure entry onto the graffiti nuisance property to abate the graffiti, no owner or occupant shall refuse, fail or neglect, after proper request, to promptly permit entry by the Manager to abate the graffiti.

**(2)** It shall be unlawful for any owner or occupant to refuse to permit entry by the Manager to abate graffiti under this Chapter after an administrative search warrant has been obtained. Any violation of this Subsection is punishable upon conviction by a fine of not more than \$500 and a jail sentence of up to six months.

**c.** If the graffiti is not removed and abated, or cause shown, as specified above, the Manager may cause the graffiti to be removed and abated upon issuance of an Administrative Search warrant.

**(1)** Graffiti Abatement. If the graffiti is not removed and abated, or cause shown, as specified above, the Manager may cause the graffiti to be removed and abated.

**(2)** Warrants. The Manager may request any Circuit Court judge to issue a graffiti abatement warrant whenever entry onto private property is necessary to remove and abate any graffiti.

**(3)** Grounds for Issuance of Graffiti Abatement Warrants; Affidavit.

**(a)** Affidavit. A graffiti abatement warrant shall be issued only upon cause, supported by affidavit, particularly describing: the applicant's status in applying for the warrant; the ordinance or regulation requiring or authorizing the removal and abatement of the graffiti; the building or property to be entered; the basis upon which cause exists to remove or abate the graffiti, and a statement of the graffiti to be removed or abated.

**(b) Cause.** Cause shall be deemed to exist if there is reasonable belief that a graffiti violation exists, as defined in this Chapter, with respect to the designated property, and that the property owner has been given notice and an opportunity to abate the graffiti, and has not responded in a timely fashion.

**(4) Procedure for Issuance of a Graffiti Abatement Warrant.**

**(a) Examination.** Before issuing a graffiti abatement warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.

**(b) Issuance.** If the judge is satisfied that cause for the removal and abatement of any graffiti nuisance exists and that the other requirements for granting the application are satisfied, the judge shall issue the graffiti abatement warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general types and estimated quantity of the items to be removed or conditions abated. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

**(c) Police Assistance.** In issuing a graffiti abatement warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the bureau in any way necessary to enter the property and, remove and abate the graffiti.

**(5) Execution of Graffiti Abatement Warrants.**

**(a) Occupied Property.** Except as provided in 14B.80.040 D.2., in executing a graffiti abatement warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request. A copy of the warrant shall be left with the occupant or the person in possession.

**(b) Unoccupied Property.** In executing a graffiti abatement warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in 14B.80.040 D.2.c.(5)(a), but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case a copy of the graffiti abatement warrant shall be conspicuously posted on the property.

**(c) Return.** A graffiti abatement warrant must be executed within 10 working days of its issue and returned to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.

#### **E. Graffiti Abatement Consent Forms.**

- 1.** The Manager shall develop consent forms allowing the Manager to enter onto property to abate the graffiti without prior notice from the Manager. The Manager shall make these consent forms available to the public.

2. Property owners and occupants may request and sign consent forms for allowing graffiti abatement. The Graffiti Abatement Manager shall renew the consent forms at least biannually.

F. To enforce any of the requirements of this Title, the Manager may gain compliance by instituting an action before the Code Hearings Officer as set out in Title 22 of City code in addition to any other available remedies.