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888-2024

Emergency Ordinance

*Amend Graffiti Materials and Sales Code to allow for misdemeanor penalties resulting from graffiti application using rights-of-way (amend Code Chapter 14B.85)

Referred

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland aims to enhance livability in every neighborhood and improve the realities and perceptions of safety and cleanliness for all residents, businesses, and visitors.
2. Graffiti vandalism has been present in Portland for generations, with a documented history dating back to the 1940s, yet in recent years the issue has become widespread, degrading the City's natural beauty, increasing the visibility of urban blight, obscuring road signage, and inviting other types of crime.
3. The City of Portland's Bureau of Planning and Sustainability has reported a 586% increase in graffiti complaints between 2020 (897 complaints) and 2022 (5,260 complaints).
4. The rise in graffiti vandalism is correlated with a decrease in foot traffic in Downtown Portland, which allows for conditions in which additional crimes persist, harming the City and the State's economy, discouraging revitalization and private investments.
5. The average Portlander is concerned with graffiti vandalism, with 61% of Portland voters, in an October 2023 poll conducted by DHM Research responding that graffiti was a "very big" or "moderately big" problem.
6. In the 2022-2023 Portland Insights Survey, respondents identified graffiti as a concern when speaking about community safety challenges, feeling unsafe, and being a contributing factor towards their feelings that Portland is a "lawless" city.
7. Property damage, such as graffiti vandalism, has contributed to the escalation of past protests, transforming peaceful demonstrations into unlawful assemblies.

Introduced by

[Commissioner Rene Gonzalez](#)

City department

[City Attorney](#); [Police](#)

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Requested Agenda Type

Time Certain

Date and Time Information

Requested Council Date

October 16, 2024

Requested Start Time

2:00 pm

Time Requested

1 hour

Changes City Code

8. The current practice of graffiti investigations burdens an already under resourced police force that has only 1.2 officers per 1,000 residents and an emergency response time four times longer than the national standard.
9. The City's existing graffiti program offers no-cost or reduced-cost graffiti removal assistance to residents, small businesses, and nonprofit organizations; however this program does not proactively prevent additional graffiti from appearing throughout the City.
10. The abatement of graffiti vandalism financially burdens other local businesses, who are allowed twenty days to remove graffiti from their property, at their own expense, before the City hires a contractor to clean up the graffiti and charges the vandalized business for the removal service.
11. Graffiti abatement costs the City of Portland and the State of Oregon millions of dollars per year, including ODOT's March 2024 allocation of \$4 million for graffiti cleanup on Portland's highways.

NOW, THEREFORE, the Council directs:

- A. Amend City Code Chapter 14B.85 as shown in Exhibit A.

Section 2. The Council declares that an emergency exists because any delay in enforcement would further erode livability in the City of Portland and law enforcement urgently require additional mechanisms to prevent escalations of peaceful protests into civil unrest; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Exhibits and Attachments

 [Proposed Amendment to Exhibit A - Commissioner Rubio](#) 99.21 KB

 [Proposed Amendments to Exhibit A - Commissioner Mapps](#) 71.95 KB

 [Exhibit A](#) 225.47 KB

Impact Statement

Purpose of Proposed Legislation and Background Information

The proposed ordinance aims to address graffiti vandalism applied using public rights-of-way. It prohibits the act of applying spray paint to property within or by utilizing the right-of-way without proper authorization. The proposed ordinance would implement a fine and/or imprisonment for persons found guilty of this offense, and require a penalty of 7 days of imprisonment and 50 hours of community service for each violation.

Financial and Budgetary Impacts

No financial or budgetary impacts.

Economic and Real Estate Development Impacts

The proposed ordinance would introduce provisions that would dissuade the initial application of graffiti vandalism to properties in or by using the public rights-of-way. Graffiti abatement/removal is costly to both private business owners and public partners. The presence of graffiti vandalism is correlated to decreased foot traffic, feelings of personal safety, and has a negative economic impact on businesses and neighborhoods that are routinely targeted.

Community Impacts and Community Involvement

This proposed ordinance was created in response to sustained concerns about graffiti vandalism among a majority of Portland residents. Residents and business owners have continuously voiced concerns about graffiti vandalism's impact on the realities and perceptions of public safety, cleanliness, and economic disinvestment. Stakeholders who were engaged included the Public Safety Service Area, Portland Police Bureau, Multnomah County Sheriff's Office, Multnomah County District Attorney's Office, TriMet, the NAACP, and local small business owners.

100% Renewable Goal

This legislation does not have an impact on the City's renewable energy goals.

Financial and Budget Analysis

The amendment to the city code allowing for misdemeanor penalties for graffiti in the public right-of-way is not expected to add significant operational costs to the Police Bureau initially. Currently, YTD, the bureau has only spent \$6,000 overtime hours on graffiti efforts. While the amendment may lead to an increase in graffiti-related calls, it is not expected to result in a substantial rise in enforcement unless the Police Bureau prioritizes these calls or the Mayor's Office mandates targeted enforcement. In such cases, operational costs could increase, especially if there are missions requiring additional resources or overtime. However, absent specific direction for increased enforcement, the impact on costs should remain minimal.

Document History

Item 888 Time Certain in [October 16, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/10/16)
(<https://www.portland.gov/council/agenda/2024/10/16>)

City Council

Referred to Commissioner of Public Affairs

Chapter 14B.85 Graffiti Materials, ~~and Sales~~, and Use in the Right-of- Way

(Chapter added by Ordinance 181231, effective September 28, 2007.)

14B.85.010 Definitions

For the purposes of this Chapter, the terms used in this Chapter shall be defined as provided in this Section:

- A. Manager:** means the Manager is the City official, or designated representative, responsible for the administration of the Graffiti Nuisance Abatement program under Chapter 14B.80.
- B. Paint pen.** A tube, marker, or other pen-like instrument with a tip of one-quarter (1/4) inch in diameter or greater that contains paint or a similar fluid and an internal paint agitator.
- C. Graffiti material.** Any can of spray paint, spray paint nozzle, paint pen, glass cutting tool, or glass etching tool or instrument.
- D. Spray paint.** Any aerosol container that is made or adapted for the purpose of applying paint or other substance capable of defacing property.
- E. Spray paint nozzle.** A nozzle designed to deliver a spray of paint of particular width or flow from a can of spray paint.

14B.85.020 Sale and Display of Graffiti Materials.

A. Picture Identification and Tracking.

1. Any person who owns, conducts, operates, or manages a business where graffiti materials are sold shall obtain current and acceptable identification when selling graffiti material to any person. The purchaser shall sign a sales form that tracks the graffiti material by lot number. The seller completing the transaction shall initial the sales form, confirming

that the purchaser is presenting acceptable identification that belongs to and is the same person as the purchaser. The entire sales form is subject to disclosure pursuant to Oregon Public Records Law.

2. The seller shall maintain a log of all sales of graffiti materials. The log shall include the names of purchasers, a description of the graffiti material sold to the purchaser, the invoice or sales form number for the sale and the date of the sale. The seller shall maintain the log for a period of two years from the date of the sale. Upon presentation of official identification, any representative of the Portland Police Bureau or any designated representative of the Manager may enter the business location of a business where graffiti materials are sold to ensure compliance with the provisions of this Chapter. The inspection shall be for the limited purpose of inspecting the business location, and the log maintained by the seller to determine compliance with the requirements of this Chapter. Any inspection under this Section shall be authorized to occur only during normal business hours of the business location.

3. For purposes of this Chapter, "acceptable identification" shall mean either a valid driver's license, a State of Oregon Identification Card issued by the Department of Motor Vehicles, or a valid government-issued identification card and a second piece of identification one of which has a photograph of the purchaser. The employee completing the transaction must visually confirm that the photograph on the identification document is of the person presenting the identification and to whom the graffiti materials are being sold.

B. Display and Storage. As of November 1, 2007, it shall be unlawful for any person who owns, conducts, operates, or manages a business where graffiti materials are sold or who sells or offers for sale any graffiti material to store or display, or cause to be stored or displayed graffiti material in an area that is accessible to the public without employee assistance in the regular course of business pending legal sale or other disposition. This Ordinance shall not be construed to preclude or prohibit the storage or display of graffiti material in an area viewable by the public so long as such items are not accessible to the public without employee assistance.

14B.85.030 Civil Penalties.

A. The Manager may file a complaint with the Code Hearings Officer, as provided under Section 22.03.020, for any violation of the provisions of this Chapter, asking the Code Hearings Officer to impose civil penalties as provided in this Section. Having made a determination to ask that the Code Hearings Officer to impose civil penalties as provided by this Section, the Manager shall give the person written notice of the determination by causing notice to be served upon the person at their business or residence address. Service of the notice shall be accomplished by mailing the notice by regular mail, or at the option of the Manager, by personal service in the same manner as a summons served in an action at law. Mailing of the notice by regular mail shall be prima facie evidence of receipt of the notice. Service of notice upon the person apparently in charge of a business during its hours of operation shall constitute prima facie evidence of notice to the business owner.

B. The Code Hearings Officer may impose civil penalties of up to \$5,000 for any person's first violation of this Chapter. The Code Hearings Officer may impose civil penalties of up to \$15,000 for second violations of this Chapter by the same person. The Code Hearings Officer may impose civil penalties of up to \$25,000 for third or additional violations of this Chapter by the same person.

C. In determining the amount of the civil penalty to be imposed for violations of the provisions of this Chapter, the Code Hearings Officer shall consider:

1. The extent and nature of the person's involvement in the violation;
2. The economic or financial benefit accruing or likely to accrue as a result of the violations;
3. Whether the violations were repeated or continuous, or isolated and temporary;
4. The magnitude and seriousness of the violation;
5. The City's costs of investigating the violations and correcting or attempting to correct the violation; and,
6. Any other factors the Code Hearings Officer may deem to be relevant.

D. The Manager's decision to file a complaint under subsection A seeking civil penalties for any violations of this Chapter shall be an exclusive choice of

remedies for enforcement of the requirements of this Chapter for those violations. In such cases, no criminal penalties may be imposed under Section 14B.85.040.

14B.85.035 Use of Spray Paint in the Right-of-Way.

A person commits the offense of unlawfully applying spray paint in the right-of-way if the person, having no right to do so nor reasonable ground to believe that the person has such right, intentionally applies graffiti to property in the right-of-way.

14B.85.040 Criminal Penalties.

A. Except as provided in Section 14B.85.030, the intentional or knowing violation of ~~any provision of this Chapter~~ [Section 14B.85.020](#) is punishable upon conviction by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

B. A violation of Section 14B.85.035 shall constitute a Class A misdemeanor as prescribed in State law and a Court must impose seven days of imprisonment for each violation of this Section.

Mapps 1 – The below language will replace 14.85.040 - Subsection B:

B. A violation of Section 14B.85.035 shall constitute a Class A misdemeanor as prescribed in State law and a Court must impose a sentence requiring the person either: to serve not less than seven days of imprisonment, or to perform community service for not less than 50 hours for each violation of this Section.

Mapps 2 – The below language will replace 14.85.035 in its entirety.

14B.85.035 Unlawful Defacement of Property in the Right-of-Way

A person commits the offense of unlawfully defacing property in the right-of-way when the person, having neither legal authority nor reasonable grounds to believe they have such authority, intentionally applies paint, ink, dye, or another similar substance, or creates etchings, carvings, or other marks, on public or private property in or from the right-of-way.

Rubio Amendment 1

To be read after Mapps Amendment 1 and Mapps Amendment 2

Replace Subsection 14B.85.040.B:

B. A violation of Section 14B.85.035 is punishable by a fine of not more than \$500 or by 50 hours of community service for each violation of this Section.

Portland City Council Agenda
Written Testimony - Item 888

Agenda Item	Name or Organization	Position	Comments	Attachment	Created	
1	888	Anonymous		Very few misdemeanors are prosecuted absent prosecution isn't this a waste of time?	No	10/12/24 11:25 AM
2	888	Anonymous	Oppose	<p>I strongly oppose the proposed change to the penalties for creating graffiti as it will cause greater waste of our tax dollars, will prevent the police from responding to serious crimes in a timely manner- something PPB already struggles with, and will disproportionately impact the people most often stopped by the cops - BIPOC persons and individuals with low or no incomes.</p> <p>While your statement says that 61% of Portlanders feel graffiti is a problem, I do not believe that they would find the proposed mandatory minimum penalty to be proportional to the crime.</p> <p>The statement that "the rise in graffiti vandalism is correlated with a decrease in foot traffic in Downtown Portland," is disturbing pseudoscience and demonstrates a lack of understanding of correlation versus causation. Downtown has problems but they are not being caused by graffiti- they are being caused by a lack of affordable housing in Portland at large (no one can afford to spend money downtown let alone live there), and a lack of adequate mental health and addiction related health care services. Graffiti is a symptom and treating it like the cause will get us nowhere while wasting funds.</p> <p>Further, I urge you to interrogate the idea that graffiti "has contributed to the escalation of past protests, transforming peaceful demonstrations into unlawful assemblies." That statement is just wild and I want to see evidence that supports it- as should you.</p> <p>Creating mandatory minimum penalties will not deter people from creating graffiti and will disproportionately impact BIPOC and low income persons because they are the ones stopped by the police, not white kids.</p> <p>Please oppose any increases in penalties for graffiti, and put the millions we already spend on abatement to better use as support for affordable housing, food-assistance, and accessible mental health and addiction care. Doing THAT will undoubtedly decrease the graffiti you seem to dislike so much.</p>	No	10/14/24 9:25 PM
3	888	Anonymous	Support	I support this and any measure to bring consequences to those vandalizing businesses, homes and public spaces with graffiti. It's also time to bring back the police anti-graffiti unit. The "hands off" approach that has been used by the city has failed us. It's NOT racist to enforce our laws.	No	10/15/24 11:17 AM
4	888	Marco Pelez	Support	Thank you Mr Gonzalez. It's about time we try to clean up the dirty city of Portland. I'm now embarrassed to have friends and family visit me here. Let's clean it up.	No	10/15/24 11:26 AM
5	888	Maria Perez	Support	Gracias Señor Gonzalez. Es importante mantener una ciudad limpia	No	10/15/24 11:28 AM
6	888	Anonymous	Oppose		No	10/15/24 6:51 PM