

COUNTY COUNCIL OF  
WICOMICO COUNTY, MARYLAND  
LEGISLATIVE SESSION, 2010

BILL NO. 2010-04

Introduced: June 1, 2010

BY: Mrs. Bartkovich, Mrs. Sample-Hughes, Mr. Cannon, Mrs. Prettyman, Mr. McCain, Mr. MacLeod and Mr. Holloway.

**AN ACT** to amend Chapter 174 titled "Nuisances" to add Article II, titled "Graffiti" Sections 174-7 through 174-13 establishing a comprehensive strategy to combat Graffiti, including a purpose provision, definitions, prohibited acts, declaration of nuisance, removal and penalties.

WHEREAS, graffiti can be a powerful visual symbol of disorder which erodes public safety, reduces the attractive physical qualities of neighborhoods, and can contribute to a downward spiral of blight and decay, lessening property values, business viability and ultimately tax revenues;

WHEREAS, reducing graffiti requires a comprehensive strategy that includes increased efforts to apprehend and hold accountable those responsible for such vandalism, the prompt removal of graffiti as soon as reasonably possible; and cost recovery mechanisms; and

WHEREAS, it appears advisable upon the recommendation of the County Council that the County Code be amended to enact such a comprehensive strategy addressing graffiti.

**SECTION I: BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, IN LEGISLATIVE SESSION**, that Chapter 174 entitled "Nuisances" be amended to enact Article II, titled "Graffiti" Sections 174-7 through 174-13 to read as follows:

Chapter 174  
Nuisances

ARTICLE I  
NUISANCES, ABANDONED VEHICLES AND FIREARMS

§ 174-1. Nuisances enumerated.

\* \* \*

ARTICLE II  
GRAFFITI

§174-7. PURPOSE.

THIS ARTICLE IS ENACTED TO HELP PREVENT THE SPREAD OF GRAFFITI VANDALISM, TO ESTABLISH A PROGRAM FOR THE REMOVAL OF GRAFFITI FROM PUBLIC AND PRIVATE PROPERTY, AND TO PROVIDE ADDITIONAL ENFORCEMENT TOOLS TO PROTECT PUBLIC AND PRIVATE PROPERTY FROM ACTS OF GRAFFITI VANDALISM AND DEFACEMENT. GRAFFITI IS A PUBLIC NUISANCE AND DESTRUCTIVE OF THE RIGHTS AND VALUES OF PROPERTY OWNERS AS WELL AS THE ENTIRE COMMUNITY.

§174-8. DEFINITIONS.

IN GENERAL, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED BELOW:

BROAD TIPPED MARKER--MEANS ANY INDELIBLE MARKER OR SIMILAR IMPLEMENT WITH A TIP WHICH, AT ITS BROADEST LENGTH, WIDTH OR DIAMETER IS 1/8<sup>TH</sup> INCH OR GREATER.

DEFACEMENT-- SHALL MEAN THE INTENTIONAL ALTERING OF THE PHYSICAL SHAPE OR PHYSICAL APPEARANCE OF PROPERTY.

GRAFFITI -- ANY UNAUTHORIZED INSCRIPTION, WORD, FIGURE, PAINTING, SYMBOL, DESIGN OR OTHER DEFACEMENT THAT IS WRITTEN, MARKED, ETCHED, SCRATCHED, SPRAYED, DRAWN, PAINTED, INSCRIBED, TAGGED, SKETCHED , CARVED, SCRAPED OR ENGRAVED ON OR OTHERWISE APPLIED TO ANY SURFACE OF PUBLIC OR PRIVATE PROPERTY BY ANY GRAFFITI IMPLEMENT, WITHOUT THE PRIOR AUTHORIZATION OF THE OWNER OR OCCUPANT OF THE PROPERTY.

GRAFFITI IMPLEMENT -- AN AEROSOL PAINT CONTAINER, A BROAD-TIPPED MARKER, GUM LABEL, PAINT STICK OR GRAFFITI STICK, ETCHING EQUIPMENT, BRUSH OR ANY OTHER DEVICE OR SUBSTANCE CAPABLE OF SCARRING OR LEAVING A VISIBLE MARK ON ANY NATURAL OR MANMADE SURFACE.

MINOR -- ANY PERSON LESS THAN THE AGE OF EIGHTEEN (18) YEARS.

PERPETRATOR- ANY PERSON APPLYING GRAFFITI TO ANY PROPERTY.

PERSON -- ANY INDIVIDUAL, PARTNERSHIP, ASSOCIATION, CORPORATION, PERSONAL REPRESENTATIVE, RECEIVER, TRUSTEE, ASSIGNEE OR ANY OTHER LEGAL ENTITY.

PROPERTY -- ANY REAL OR PERSONAL PROPERTY AND THAT WHICH IS AFFIXED, INCIDENTAL OR APPURTENANT TO REAL PROPERTY INCLUDING, BUT NOT LIMITED TO, ANY STRUCTURE, FENCE, WALL, BUILDING, BRIDGE, SIDEWALK, STORM DRAIN, SIGN, WHETHER PERMANENT OR NOT.

§174-9. PROHIBITED ACTS.

A. DEFACEMENT. IT SHALL BE UNLAWFUL FOR ANY PERSON TO APPLY GRAFFITI TO PROPERTY, EITHER PUBLICALLY OR PRIVATELY OWNED, WITHOUT THE EXPRESS PERMISSION OF THE OWNER OR OPERATOR OF SUCH PROPERTY. EACH PROPERTY DEFACED SHALL BE CONSIDERED A SEPARATE OFFENSE.

B. POSSESSION OF GRAFFITI IMPLEMENTS.

(1) NO PERSON, INCLUDING A MINOR, MAY POSSESS A GRAFFITI IMPLEMENT ON PUBLIC OR PRIVATE PROPERTY WITH THE INTENT TO DEFACE THE PROPERTY WITHOUT THE EXPRESS PERMISSION OF THE OWNER OR OPERATOR OF THE PROPERTY.

(2) NO MINOR MAY POSSESS ANY GRAFFITI IMPLEMENT WHILE ON ANY SCHOOL PROPERTY, GROUNDS, FACILITIES, BUILDINGS, OR STRUCTURES, OR IN AREAS IMMEDIATELY ADJACENT TO THOSE SPECIFIC LOCATIONS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE OWNER OR OCCUPANT OF THE PROPERTY. THE PROVISIONS OF THIS SECTION SHALL 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 SHALL BE UPON THE MINOR STUDENT TO ESTABLISH THE NEED TO POSSESS A BROAD-TIPPED MARKER.

§174-10 GRAFFITI AS A NUISANCE.

THE EXISTENCE OF GRAFFITI ON PUBLIC OR PRIVATE PROPERTY IN VIOLATION OF THIS ARTICLE IS EXPRESSLY DECLARED TO BE A PUBLIC NUISANCE AND, THEREFORE, IS SUBJECT TO THE REMOVAL AND ABATEMENT PROVISIONS SPECIFIED IN THIS ARTICLE.

§174-11 GRAFFITI REMOVAL.

A. ANY PERPETRATOR ON PUBLIC OR PRIVATE PROPERTY SHALL HAVE THE DUTY TO REMOVE THE GRAFFITI WITHIN TEN (10) DAYS AFTER NOTICE BY THE COUNTY, OR LONGER IF ALLOWED BY THE CODE ENFORCEMENT OFFICER OR PRIVATE OWNER OF THE PROPERTY INVOLVED.

(1) SUCH REMOVAL SHALL BE DONE IN A MANNER THAT RETURNS THE PROPERTY TO ITS ORIGINAL CONDITION, OR AS CLOSE AS POSSIBLE, PRIOR TO THE GRAFFITI DEFACEMENT.

(2) THE PERPETRATOR SHALL BE RESPONSIBLE FOR THE PAYMENT OF THE COSTS OF THE REMOVAL, WHETHER THE PERSON IS PHYSICALLY REMOVING THE GRAFFITI OR NOT.

(3) FAILURE OF THE PERPETRATOR TO REMOVE THE GRAFFITI OR PAY FOR THE REMOVAL SHALL CONSTITUTE A VIOLATION OF THIS ARTICLE. WHERE A MINOR IS THE PERPETRATOR, THE PARENTS OR LEGAL GUARDIAN SHALL ALSO BE RESPONSIBLE FOR SUCH REMOVAL OR FOR THE PAYMENT OF THE REMOVAL.

B. THE NOTICE REQUIRED BY PARAGRAPH A OF THIS SECTION SHALL CONTAIN THE FOLLOWING INFORMATION:

(1) THE STREET ADDRESS AND LEGAL DESCRIPTION OF THE PROPERTY SUFFICIENT FOR IDENTIFICATION OF THE PROPERTY;

(2) A STATEMENT THAT THE PROPERTY IS A GRAFFITI NUISANCE PROPERTY WITH A CONCISE DESCRIPTION OF THE CONDITIONS

LEADING TO THE FINDING;

- (3) A STATEMENT THAT THE GRAFFITI MUST BE REMOVED WITHIN TEN (10) DAYS AFTER RECEIPT OF THE NOTICE AND THAT IF THE GRAFFITI IS NOT ABATED WITHIN THAT TIME THE COUNTY WILL TAKE FURTHER LEGAL ACTION; AND
  - (4) CERTIFICATION OF THE ENFORCING OFFICIAL ATTESTING TO THE TRUTH OF THE MATTERS SET FORTH.
- C. THE NOTICE REQUIRED BY PARAGRAPH A OF THIS SECTION SHALL BE SERVED ON THE PERPETRATOR BY WRITTEN NOTICE MAILED, CERTIFIED MAIL RETURN RECEIPT REQUESTED TO THE LAST KNOWN ADDRESS OF THE INDIVIDUAL, OR BY PERSONAL SERVICE UPON SUCH INDIVIDUAL.

§174-12 GRAFFITI REMOVAL BY THE COUNTY.

- A. WHENEVER THE COUNTY BECOMES AWARE OR IS NOTIFIED AND DETERMINES THAT GRAFFITI IS LOCATED ON PUBLICLY OR PRIVATELY OWNED PROPERTY VIEWABLE FROM A PUBLIC PLACE, THE COUNTY SHALL BE AUTHORIZED TO USE PUBLIC FUNDS, IF THEY ARE AVAILABLE, FOR THE REMOVAL OF THE GRAFFITI, OR FOR THE PAINTING OR REPAIRING OF THE GRAFFITI, BUT SHALL NOT AUTHORIZE OR UNDERTAKE TO PROVIDE FOR THE PAINTING OR REPAIR OF ANY MORE EXTENSIVE AN AREA THAN THAT WHERE THE GRAFFITI IS LOCATED, UNLESS THE CODE ENFORCEMENT OFFICER DETERMINES IN WRITING THAT A MORE EXTENSIVE AREA IS REQUIRED TO BE REPAINTED OR REPAIRED, OR UNLESS THE PROPERTY OWNER AGREES TO PAY FOR THE COSTS OF REPAINTING OR REPAIRING THE MORE EXTENSIVE AREA.
- B. PRIOR TO ENTERING UPON PRIVATE PROPERTY OR PROPERTY OWNED BY A PUBLIC ENTITY OTHER THAN THE COUNTY FOR THE PURPOSE OF GRAFFITI REMOVAL THE COUNTY, THROUGH THE CODE ENFORCEMENT OFFICER, SHALL ATTEMPT TO SECURE THE CONSENT OF THE PROPERTY OWNER AND A RELEASE OF THE COUNTY FROM LIABILITY FOR PROPERTY DAMAGE OR PERSONAL INJURY. THE RELEASE OF LIABILITY FORM SHALL BE APPROVED BY THE COUNTY ATTORNEY.
- C. IF THE COUNTY HAS REQUESTED CONSENT TO REMOVE OR PAINT OVER THE GRAFFITI AND THE PROPERTY OWNER HAS REFUSED CONSENT FOR ENTRY ON TERMS ACCEPTABLE TO THE COUNTY, THE COUNTY SHALL COMMENCE ABATEMENT AND COST RECOVERY PROCEEDINGS FOR THE GRAFFITI REMOVAL ACCORDING TO THE PROVISIONS IN §174-13B.

§174-13 VIOLATIONS AND PENALTIES.

A. PERPETRATOR.

(1) CRIMINAL.

- (a) ANY PERSON WHO VIOLATES, REFUSES OR NEGLECTS TO COMPLY WITH §174-9 AND §174-11A SHALL BE GUILTY OF A MISDEMEANOR

AND SUBJECT TO IMPRISONMENT FOR A TERM NOT TO EXCEED SIXTY (60) DAYS, AND/OR A FINE NOT TO EXCEED ONE-THOUSAND DOLLARS (\$1,000). EACH AND EVERY DIFFERENT PROPERTY DEFACED IS A SEPARATE OFFENSE. EACH DAY THAT SUCH GRAFFITI SHALL BE PERMITTED TO EXIST AFTER THE EXPIRATION OF THE TIME LIMIT IN THE NOTICE REQUIRED BY §174-11 SHALL BE DEEMED A SEPARATE AND ADDITIONAL OFFENSE.

(b) 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.

(c) THE COURT MAY 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 LEGALGUARDIAN SHALL BE ORDERED JOINTLY AND SEVERALLY LIABLE WITH THE MINOR TO MAKE THE RESTITUTION. IF UNPAID, ALL SAID RESTITUTION ASSESSED SHALL BECOME A LIEN AGAINST THE PROPERTY OF THE MINOR AND/OR THE MINOR'S PARENTS' OR LEGAL GUARDIAN'S PROPERTY.

(d) IN THE CASE OF A MINOR, THE PARENTS OR LEGAL GUARDIAN SHALL BE JOINTLY AND SEVERALLY LIABLE WITH THE MINOR FOR PAYMENT OF ALL FINES. IF UNPAID, ALL SAID FINES ASSESSED SHALL BECOME A LIEN AGAINST THE PROPERTY OF THE MINOR AND/OR THE MINOR'S PARENTS' OR LEGAL GUARDIAN'S PROPERTY.

(e) IN THE EVENT THAT THE COUNTY IS REQUIRED TO ABATE THE GRAFFITI AS PROVIDED HEREIN IN AGAINST THE PERPETRATOR, THE COST OF SUCH ABATEMENT SHALL BE ASSESSED TO THE PERPETRATOR. THE COST OF ABATEMENT SHALL INCLUDE ALL ACTUAL COSTS INCURRED BY THE COUNTY, INCLUDING, BUT NOT LIMITED TO, THE COSTS OF ALL MATERIAL AND LABOR AND ANY APPLICABLE PENALTIES. IF UNPAID, ALL SAID COSTS AND APPLICABLE PENALTIES ASSESSED SHALL BECOME A LIEN AGAINST THE PROPERTY OF THE PERPETRATOR AND SHALL BE COLLECTED IN THE SAME MANNER AS REAL ESTATE TAXES BY THE COUNTY. IN THE CASE OF A MINOR PERPETRATOR, THE PARENTS OR LEGAL GUARDIAN SHALL BE ORDERED JOINTLY AND SEVERALLY LIABLE WITH THE MINOR TO PAY THE COSTS OF THE ABATEMENT.

B. PROPERTY OWNER

(1) CIVIL.

(a) ANY PERSON, FIRM, CORPORATION OR ENTITY WHO REFUSES OR NEGLECTS TO PERMIT THE COUNTY TO ENTER THEIR PROPERTY SHALL BE GUILTY OF A CIVIL INFRACTION AND SHALL BE SUBJECT TO A FINE OF ONE HUNDRED DOLLARS (\$100.00) FOR THE FIRST OFFENSE; TWO HUNDRED DOLLARS (\$200.00) FOR THE SECOND

OFFENSE; AND FIVE HUNDRED DOLLARS (\$500.00) FOR EACH SUBSEQUENT OFFENSE. EACH DAY THAT SUCH NUISANCE SHALL BE PERMITTED TO EXIST AFTER A REFUSAL TO PERMIT THE COUNTY ENTRY ON TO THEIR PROPERTY SHALL BE DEEMED A SEPARATE AND ADDITIONAL OFFENSE.

(b) IF THE COURT RENDERS JUDGMENT THAT THE PERSON IS GUILTY OF THE CIVIL INFRACTION THE COURT MAY ORDER THE PERSON TO ABATE THE INFRACTION. (SEE §221-7 I)

(c) IN THE EVENT THAT THE COUNTY IS REQUIRED TO ABATE THE GRAFFITI BECAUSE OF THE PERSON'S FAILURE TO FOLLOW THE COURT ORDER UNDER 174-13B(1)(B), THE COST OF SUCH ABATEMENT SHALL BE ASSESSED TO THE OWNER(S) OF THE LAND ON WHICH THE GRAFFITI EXISTED, AS WELL AS ALL SUBJECTS OF THE CIVIL INFRACTION CITATION. THE COST OF ABATEMENT SHALL INCLUDE ALL ACTUAL COSTS INCURRED BY THE COUNTY, INCLUDING, BUT NOT LIMITED TO, THE COSTS OF ALL MATERIAL AND LABOR AND ANY APPLICABLE PENALTIES. IF UNPAID, ALL SAID COSTS AND APPLICABLE PENALTIES ASSESSED SHALL BECOME A LIEN AGAINST THE VIOLATOR'S PROPERTY AND SHALL BE COLLECTED IN THE SAME MANNER AS REAL ESTATE TAXES BY THE COUNTY.


C. GRAFFITI TRUST FUND. ANY FINES ASSESSED AND COLLECTED AGAINST ANY VIOLATOR OF THIS ARTICLE SHALL BE PLACED IN THE GRAFFITI TRUST FUND, ALONG WITH ANY MONETARY DONATIONS RECEIVED FROM PERSONS WISHING TO CONTRIBUTE TO THE FUND. THE COUNTY EXECUTIVE SHALL DIRECT THE EXPENDITURES OF MONIES FROM THE FUND. SUCH EXPENDITURES SHALL BE LIMITED TO THE PAYMENT OF THE COST OF GRAFFITI REMOVAL AND ADMINISTRATION OF THIS ARTICLE.

**SECTION II: BE IT FURTHER ENACTED THAT** this Bill shall be known as Bill No. 2010-04 of Wicomico County, Maryland and shall take effect sixty (60) days after its final passage, unless a proper Petition for Referendum thereof shall be filed prior to said date; in which event, the Bill shall not take effect until the expiration of thirty (30) days following the approval of this Bill by a majority of the qualified voters of the County voting in any such referendum.

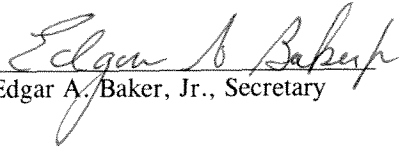
Certified correct as passed and adopted by the County Council of Wicomico County, Maryland this 6<sup>th</sup> day of July 2010.

WICOMICO COUNTY, MARYLAND

  
BY: Gail M. Bartkovich, Council President

  
BY: Edgar A. Baker, Jr., Secretary

I HEREBY CERTIFY that twenty-five (25) copies of the above Bill are available for distribution to the public and press at the time of its introduction.

  
Edgar A. Baker, Jr., Secretary

Explanation:

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

~~Strike out indicates material deleted from law.~~

~~CAPITAL STRIKE OUT~~ indicates matter stricken from Bill by Amendment.

Underlining indicates Amendments to Bill.

COUNTY COUNCIL  
OF  
WICOMICO COUNTY, MARYLAND

BILL NO. 2010-04

INTRODUCED BY: Council at the request of the County Executive Legislative Day No. 11

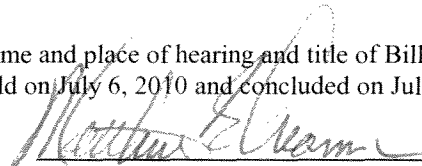
Date: June 1, 2010

Introduced, read first time, ordered posted and public hearing scheduled on: July 6, 2010

Time: 6:30 p.m. Location: Council Chambers

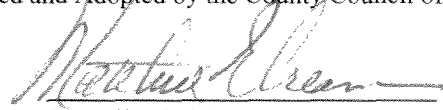
**AN ACT** to amend Chapter 174 titled "Nuisances" to add Article II, titled "Graffiti" Sections 174-7 through 174-13 establishing a comprehensive strategy to combat Graffiti, including a purpose provision, definitions, prohibited acts, declaration of nuisance, removal and penalties.

**PUBLIC HEARING:** Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on July 6, 2010 and concluded on July 6, 2010.

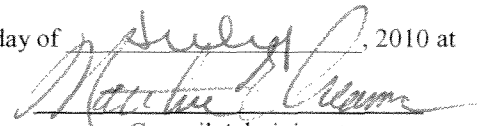
  
Council Administrator

**CERTIFICATION**

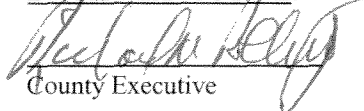
The undersigned hereby certifies that this Bill was Approved and Adopted by the County Council of Wicomico County, Maryland, on the 6<sup>th</sup> day of July 6, 2010.

  
Council Administrator

Presented to the County Executive for approval this 12<sup>th</sup> day of July, 2010 at  
1:52 a.m./p.m.  
(5 days §411)

  
Council Administrator

**BY THE EXECUTIVE:**

  
County Executive

APPROVED

Date: 7/12/10 (21 days §411)


VETOED

Date: \_\_\_\_\_


**EFFECTIVE DATE:** This Bill having been approved by the County Executive and returned to the Council, becomes law on July 12 and effective on: September 10 (60 days §311)

**ENROLLMENT:** Legislative Bill No. 2010-04 is herewith submitted to the County Council of Wicomico County for enrollment as being the text as finally passed.

CERTIFIED TRUE AND CORRECT

  
Council Administrator  
Date: 7-13-10

ENROLLED

  
Council President  
Date: 7-13-10