MEMORANDUM

Agenda Item No. 7(A)

(Second Reading 10-6-09)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: June 30, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Ordinance amending Section 21-30.01 of the Code providing for continuing penalties for property owners of properties with graffiti during the appeal time of a Chapter 8CC citation

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: October 6, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ordinance amending Section 21-30.01 of the Code; providing for continuing penalties for property owners of properties with graffiti during appeal time of a citation

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The ordinance providing for continuing penalties during the appeal time of a graffiti citation will have a positive fiscal impact to Miami-Dade County that cannot be easily quantified.

Assistant County Manager

fis05809

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: October 6, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 7(A)

Please note any items checked.

	"3-Day Rule" for committees applicable if raised
✓	**6 weeks required between first reading and public hearing**
✓	**4 weeks notification to municipal officials required prior to public hearing**
	Decreases revenues or increases expenditures without balancing budget
	Budget required
	Statement of fiscal impact required
	Ordinance creating a new board requires detailed County Manager's report for public hearing
	No committee review
	Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve
	Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(A)
10-6-09

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 21-30.01 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING FOR CONTINUING PENALTIES FOR PROPERTY OWNERS OF PROPERTIES WITH GRAFFITI DURING THE APPEAL TIME OF A CHAPTER 8CC CITATION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 21-30.01 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 21-30.01. Graffiti.

(a) *Definitions.* For the purpose of this section, the following terms apply.

(1) "*Broad tipped indelible marker*" means any felt tip marker, or similar implement, which contains a fluid which is not water soluble and which has a flat or angled writing surface one-half (1/2) inch or greater.

(2) "*Bona fide evidence of majority*" means a document issued by a federal, state, county, or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

(3) "*Business day*" means any day of the week except Saturday, Sunday, or legal holidays.

(4) "*Commercial property*" means real and personal property that is used for business, commercial, or for-profit purposes including but not limited to vehicles, dumpsters, advertisements and signs. It shall be prima facie evidence that a property is commercial if it (1) is located in a business, commercial, office, apartment, hotel or warehouse zoning district; (2) contains commercial or business advertising visible from the right-of-way; or (3) has posted on its premise a business occupational license. "Commercial property" shall include advertising and billboards. "Commercial property" shall include residential property of four (4) or more units that is rented or advertised for rent. "Commercial property" shall not include (1) single family homes or residential property of three (3) or less units; (2) property owned by governments; (3) property used for non-profit purposes by educational institutions, charities, or religious institutions; (4) property used for agricultural purposes except for those portions of the property containing a business open to the general public.

(5) "*Corrective action*" mean an act required to remove or effectively obscure graffiti that is visible from the right-of-way.

(6) "*Director*" mean the Director of the Public Works Department or his or her designee.

(7) "*Non-commercial property*" means all property that is not included in the definition of commercial property in this section.

(8) "*Owner*" means any and all persons with legal and/or equitable title to real property in Miami-Dade County as their names and addresses are shown upon the records of the Property Appraiser Department.

(9) "*Supervising adult*" means an individual twenty-one (21) years of age or older who has been given responsibility by the minor's parents, legal guardian, or other lawful authority to supervise the minor.

(10) "*Used or intended to be used*" includes usage in the course of a violation or usage to transport a violator to or from the scene of a violation.

(b) *Application of section.*

(1) This section shall be applicable in incorporated and unincorporated areas of Miami-Dade County, with the enforcement of the provision of this section in the unincorporated area being the responsibility of Miami-Dade County and in the incorporated area being the responsibility of the municipalities.

(c) *Affect on municipal ordinances.* It is the intent of the Board to provide a minimum standard for those graffiti offenses provided in subsections (f), (h), and (i) in incorporated areas of Miami-Dade County. Any municipality in Miami-Dade County may adopt more stringent graffiti regulations and/or higher penalties for graffiti offenses than those provided herein.

(d) *Graffiti prohibited.*

(1) No person shall write, paint, or draw any inscription, figure, or mark of any type on any public or private building or structure or other real or personal property, owned, operated, or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm, or corporation, unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained and filed with the Public Works Department, Graffiti Coordinator. No filing is required if the owner, owner's agent, manager or operator of the property has obtained a valid painting permit in accordance with other pertinent law.

(2) Any person violating this subsection shall be punished by a fine of two hundred and fifty dollars ($250.00) 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 the County jail for a term not to exceed sixty (60) days or by both fine and imprisonment at the discretion of the court.

(I) 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.

(II) Failure of the parents or legal guardian to make payment, will result in the filing of a lien on the parents or legal guardian's property to include the fine and administrative costs.

(III) Upon an application and finding of indigency, the court may decline to order fines against the minor or parents.

(3) In addition to any punishment listed in subsection (d)(2), the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the defendant's offense in the amount or manner determined by the court.

(I) In the case of a minor, the parents or legal guardian shall be ordered jointly and severably liable with the minor to make such restitution.

(4) In addition to any punishment listed in subsection (d)(2) or restitution ordered under subsection (d)(3), the court shall order any violator to perform monitored community service in the removal of graffiti of not less than forty (40) hours and not more than one hundred (100) hours.

(5) Forfeiture of personal property. All personal property, including, but not limited to automobiles and bicycles, used or intended to be used in violating this subsection, shall be forfeitable to Miami-Dade County. In forfeiting such personal property, the County shall follow the procedures outlined in Section 31-116 et seq. of the Miami-Dade County Code concerning forfeitures of

passenger motor vehicles for violation of the transportation code, except that one (1) violation of this subsection shall be the basis for forfeiture; the County Manager or his designee shall act as the party for the County in lieu of CSD as recipient of all request for hearings and for all other purposes under the procedure; the property subject to forfeiture shall be personal property as described above. In any forfeiture under this section, the court shall not order a forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by Florida and Federal Constitution.

(I) Municipalities may establish their own system for the forfeiture of personal property.

(e) *Graffiti removal by the County.*

(1) Whenever the County becomes aware of the existence of graffiti on any property, including any structure or improvement, that abuts the public right-of-way within any unincorporated area of the County, County personnel are authorized to immediately remove or obscure such graffiti.

(2) For purposes of this subsection (e) only, "property that abuts the public right-of-way" means property that can be accessed by County personnel without substantially encroaching onto private property, such as subdivision walls and other structures and improvements lying at or near the public right-of-way.

(3) General notice. Property owners are hereby put on notice of the County's intention to immediately obscure graffiti placed on walls, buildings and other surfaces that abut the public right-of-way. Team Metro shall also publish notice once during each week for four (4) consecutive weeks in the Miami Herald and shall substantially comply with Chapter 50, Florida Statutes. Any property owner who objects to graffiti being obscured on property abutting the public right-of-way shall file a statement of objection with the County Manager or

his designee within thirty (30) days of the date of the final published notice. Such objection shall be effective for one (1) year. A new objection must be filed each year thereafter to preserve the objection. If an objection is filed, subsection (e) shall not apply to the property owner's property. The County reserves the right, however, to ensure that graffiti is obscured on such property by citation and fine under subsection (g).

(4) Specific notice to affected property owner. The appearance of graffiti on a wall, building or other surface abutting the public right-of-way shall serve as notice to the property owner that the graffiti is subject to being obscured or removed by the County. Any property owner who has not filed a statement under subsection (3) and who desires to obscure or remove the graffiti himself shall (i) immediately remove the graffiti; or (ii) notify the County Manager or his designee immediately of his intention to remove the graffiti within forty-eight (48) hours. Graffiti not removed within forty-eight (48) hours is subject to removal by the County.

(5) Nothing contained in this subsection (e) shall be construed to supersede or otherwise affect the provisions contained in subsection (g).

(f) *Graffiti removal by the property owner.*

(1) Whenever the County becomes aware of the existence of graffiti visible from the public right-of-way on any property, real or personal, including structures or improvements within the County, a Code Enforcement Officer is authorized, upon such discovery, to give, or cause to be given, notice to take corrective action to the property owner or the property owner's agent or manager.

(2) For commercial property, the property owner or the property owner's agent or manager shall take corrective action within two (2) business days from receipt or posting of the notice listed in subsection (f)(1). For non-commercial property, the property owner or the property owner's agent or manager shall take corrective action within fourteen (14)

calendar days from receipt or posting of the notice listed in subsection (f)(1).

(3) If the property owner or the property owner's agent or manager fails to take corrective action, he or she shall be cited pursuant to Chapter 8CC of this Code or by any municipal citation system.

(I) For commercial property, the property owner or the property owner's agent or manager has two (2) business days from receipt or posting of the citation to file for an appeal hearing before an 8CC hearing officer, or municipal hearing officer, or take corrective action. For non-commercial property, the property owner or the property owner's agent or manager has seven (7) calendar days from receipt or posting of the citation to file for an appeal hearing before an 8CC Hearing Officer, or municipal hearing officer, or take corrective action.

(II) If the owner or the property owner's agent or manager does not appeal the citation, they shall pay the fine in accordance with Section 8CC-10 of the Code, or in accordance with the applicable municipal citation system. Thereafter, each day the owner, or property owner's agent or manager fails to take corrective action counts as a continuing violation.

(4) The above listed hearing shall be conducted not sooner than five (5) calendar days, but not later than twenty (20) calendar days after receipt of the appeal.

(5) [[~~If the owner, or the property owner's agent or manager is found guilty by the Hearing Officer, he or she shall pay the fine in accordance with Section 8CC-10 of the Code, or in accordance with the applicable municipal citation system, and will be required to take corrective action. For commercial property, corrective action must be taken within two (2) business days; for non-commercial property, corrective action must be taken within fourteen (14)~~

~~calendar days of the rendering of the Hearing Officer's order. Thereafter, each day the owner, or the property owner's agent or manager, fails to take corrective action, will count as a continuing violation.~~]]>>Notwithstanding any provision of this Chapter or Chapter 8CC of the Miami-Dade County Code to the contrary, the appeal of a violation of this section shall not extend or otherwise change the time period for corrective action of the violation. Continuing penalties as provided for herein and in Section 8CC-4(c) shall accrue upon the expiration of the time period provided in section (3) above.<<

(6) The Director, or City Manager of a municipality, shall cause corrective action to take place at the owner's expense after two (2) business days for commercial property, or fourteen (14) calendar days for non-commercial property from the date of citation or date of the rendering of the Hearing Officer's order, which finds the violator guilty.

(I) The County or municipality shall have the right to enter upon private property to the extent necessary to take corrective action. Entry into any dwelling or structure is expressly prohibited.

(II) After taking corrective action, the Director, or City Manager of a municipality, shall file a lien in the amount of all expenses incurred in correcting the condition, including all fines, continuing penalties and actual administrative costs.

(III) Such liens shall be enforceable in the same manner as a tax lien and may be satisfied at any time by payment thereof, including accrued interest. Upon such payment, the Clerk of the Circuit Court shall, by appropriate means, evidence the satisfaction and cancellation of such lien upon the record thereof. Notice of such lien may be filed in the Office of the Clerk of the Circuit Court and recorded among the public records of Miami-Dade County, Florida.

(7) It shall be an affirmative defense preventing any fines from issuing under this section if the property owner proves at a hearing that, at the subject location, he or she had been victimized by graffiti three (3) or more times within the calendar year of the violation and had removed or effectively obscured the graffiti within two (2) business days of its appearance for commercial property, or within fourteen (14) days of its appearance for non-commercial property, or within the times provided in this ordinance if a notice or violation was issued. This mitigation provision applies only to fines and shall not prevent the Director, pursuant to section (d)(6), from taking corrective action and liening the property for costs, if the property owner fails to take corrective action.

(g) *Possession of spray paint and markers.*

(1) Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint can or broad-tipped indelible marker with the intent to violate the provisions of subsection (d)(1).

(2) Possession of spray paint and markers by minors on public property prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any public property, highway, street, alley or way except in the company of a supervising adult.

(3) Possession of spray paint and markers by minors on private property prohibited without consent of owner. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent, or manager, or person in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession while on his or her property.

(4) Any person violating this subsection (g)(1), (2) or (3) shall be punished by a fine of two hundred and fifty dollars ($250.00) for a first offense, and five hundred dollars ($500.00) for a second offense and one thousand dollars ($1,000.00) for each subsequent offense, or by imprisonment in the County Jail for a term not to exceed sixty (60) days, or by both fine and imprisonment in the discretion of the court.

(I) In the case of a minor, the parents or legal guardian shall be responsible for payment of all fines.

(II) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents or legal guardian's property to include the fine and administrative costs.

(5) In addition to any punishment, the court shall order any person found in violation of subsection (g)(1), (2) or (3) to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court.

(I) Where the defendant is a minor, the parent or legal guardian shall be jointly and severably liable with the minor to make such restitution.

(6) In addition to any punishment listed in subsection (g)(5) or restitution ordered under subsection (g)(6), the court shall order any person found in violation of subsection (g)(1), (2), or (3) to perform monitored community service in the removal of graffiti of not less than forty (40) hours and not more than one hundred (100) hours.

(h) *Storage and sale of spray paint and markers.*

(1) *Sale to minors prohibited.* No person or firm shall sell or cause to be sold to any person under the age of eighteen (18) years, and no person under the age of eighteen (18) years shall buy any aerosol

container of spray paint or broad-tipped indelible markers. Evidence that a person, his or her employee, or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution thereof.

(2) *Display or spray paint and markers.* Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers shall:

(I) Place a sign in clear public view at or near the display of such products stating:

"GRAFFITI IS A CRIME. ANY PERSON DEFACING REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WITH PAINT OR ANY OTHER LIQUID OR DEVICE IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO 60 DAYS AND/OR A FINE UP TO $1,000.00."

(II) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers.

"IT IS A VIOLATION OF THE LAW TO SELL AEROSOL CONTAINERS OF SPRAY PAINT OR BROAD-TIPPED INDELIBLE MARKERS TO PERSONS UNDER 18 YEARS OF AGE PUNISHABLE BY A CIVIL FINE OF $100.00."

(III) Store or cause such aerosol containers or marker pens to be stored either (a) in the direct line of sight from the cash-register work station or any other work station that is normally continuously occupied while the store is open, or (b) in a place not accessible to the public in the regular course of business without employee assistance,

pending legal sale or disposition of such marker pens or paint containers.

(3) Violation of subsection (h)(1) or (2) shall result in a civil penalty of one hundred dollars ($100.00) for a first offense and two hundred dollars ($200.00) for subsequent offenses. When three (3) violations of subsection (h)(1) or (2) occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers for a period up to two (2) years. Violation of such injunction shall be punished by a fine of one hundred dollars ($100.00) per day of violation in addition to any other penalties levied by the Court. Failure to make payment of fines will be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tip indelible markers until payment of the fine, attorney's fees and costs.

(i) *Anti-graffiti trust fund.*

(1) There is hereby created the Miami-Dade County Anti-Graffiti Trust Fund. Civil and criminal penalties assessed against violators of this section shall be placed in the fund. The Board of County Commissioners shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of removal of graffiti, the payment, at the discretion of the County Manager, or rewards for information leading to the arrest, taking into custody, adjudication, referral to pre-trial programs or conviction for violation of this section or other state laws relating to graffiti, the costs of administering this ordinance, and such other public purposes as may be approved by the Miami-Dade County Commission by resolution.

(2) Each jurisdiction that enforces the provisions of this section shall have the right to create its own anti-graffiti trust fund to fund anti-graffiti measures.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Thomas H. Robertson

Prime Sponsor: Senator Javier D. Souto