

~~§ 126 - Natural scenery, penalty for defacement~~

"Whoever paints, or puts upon, or in any manner affixes to, any fence, structure, pole, rock or other object which is public property or the property of another, whether within or without the limits of the highway, any words, device, trade mark, advertisement or notice which is not required by law to be posted thereon, without first obtaining the written consent of the municipal or public officer in charge thereof or the owner or tenant of such property, shall, upon complaint of such municipal or public officer, or of such owner or tenant, be punished by a fine of not less than ten nor more than one hundred dollars, and in addition shall forfeit to the use of the public or private owner of such property or the tenant thereof the cost of removing or obliterating such defacement to be recovered in an action of tort. Any word, device, trade mark, advertisement or notice which has been painted, put up or affixed within the limits of a highway in violation of this section shall be considered a public nuisance, and may be forthwith removed or obliterated and abated by any person."

§ 1-7, 12.

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CITY OF CAMBRIDGE

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ASSISTANT CITY SOLICITOR

April 2, 1976

Mr. Paul E. Healy
City Clerk
City Hall
Cambridge, Massachusetts

Dear Mr. Healy:

You have asked for an opinion concerning which General Ordinances of the City would be subject to the proposed Two Hundred (\$200.00) Dollar penalty provision ordinance to be included in the City Code.

As you are aware, the increased penalty of Two Hundred (\$200.00) Dollars is to be incorporated into the General Ordinances by way of amendment to the present Fifty (\$50.00) Dollar penalty provision ordinance. Said ordinance is currently delineated in the City Code as Section 1-11 of Chapter 1. This Ordinance clearly indicates that the said penalty provision is to apply to any ordinance of the City in which "any act is prohibited or is made unlawful, or whenever in such Code...the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor..." (Emphasis added).

It is my opinion, therefore, that the Two Hundred (\$200.00) Dollar penalty provision would similarly apply to those ordinances falling within the ambit of Chapter 1, Section 1-11, of the City Code, and which have no penalty provision stated therein.

There appears to be no provision in the City Code which requires a person who has defaced public or private property to pay for the cost of removal. The sole ordinance pertaining to reimbursement for the defacing of property, both public and private, states in part:

"If upon conviction under the above City Ordinance, it is shown that the act committed was a first offense, and if the person makes restitution to the party injured, the justice of the District Court may continue the case without a finding." (Ord. No. 853, Sept. 29, 1975)

Mr. Paul E. Healy
City Clerk

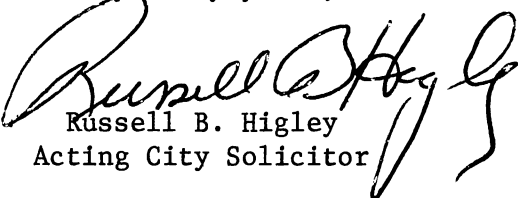
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April 2, 1976

This Ordinance does not appear to require mandatory restitution by the wrongdoer.

It should be noted, however, that State Statutes impose both fines and imprisonment for various forms of vandalism. (See General Laws, Chapter 266). General Laws, Chapter 266, Section 126 requires the reimbursement for costs of removal of defacements, but such reimbursement can only be achieved through an action of tort. A copy of this Section is attached.

Very truly yours,


Russell B. Higley
Acting City Solicitor

RBH:jm
Enc.

17. 0-7

Comm. from Russell B. Higley, Acting City
Solicitor, concerning the General Ordinances
of the City which would be subject to the
proposed \$200.00 penalty provision ordinance.

In City Council,
April 5, 1976

4/5/76

Referred to the
Comm. on Ordinances
To be filed with
Proposed ordinance
amendment in
Committee