

★ Roll Call Number

Agenda Item Number

44

Date September 22, 2008

Communication from Operation Downtown requesting to speak regarding Graffiti Permits for proposed "Walk Your Butt to the Can" Campaign.

Moved by \_\_\_\_\_ to receive

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

September 18, 2008

Mayor Cownie and Members  
of the Des Moines City Council

Re: Graffiti Permits for the proposed "Walk your butt to the can"  
campaign.

Summary:

Operation Downtown seeks a graffiti permit to allow the following words to be painted on the public sidewalks at specified locations downtown. "CIGARETTE BUTTS ARE LITTER TOO PLEASE WALK YOUR BUTT TO THE CAN"

Graffiti permits are generally issued to allow graffiti to be applied on private property. When the graffiti is to be applied to City property (i.e. the street or sidewalk), the City must consent to the issuance of the permit as the owner of the affected property. If consent is granted, the allowed duration of the graffiti and responsibility for its eventual removal should also be considered.

Discussion:

Graffiti is defined in the City Code as "any inscription, drawing, picture, letter, number, symbol or other written communication sprayed, painted or in some manner inscribed on street, sidewalk, building or wall surfaces not intended primarily for such use." City Code § 70-276. The graffiti regulations in Chapter 70 supplement the sign regulations in the Zoning Ordinance codified in Chapter 135 of the City Code. Graffiti that qualifies as art<sup>1</sup> on private property is exempt from the sign regulations in the Zoning Ordinance and would otherwise be unregulated. Graffiti that primarily serves to advertise a commercial product or service is subject to regulation under both the graffiti and sign regulations.

The City regulates graffiti by requiring it be used under authority of a graffiti permit, and by regulating the issuance of such permits. The criteria for issuance of a graffiti permit include a requirement that the graffiti be with the consent and under the direction of the owner.

<sup>1</sup> Art is broadly defined, and reasonable people do frequently disagree on what constitutes art. A legal definition of art is beyond the scope of this communication.



LEGAL DEPARTMENT  
CITY HALL  
400 ROBERT D. RAY DRIVE  
DES MOINES, IA 50309-1891  
(515) 283-4130 Administration  
(515) 283-4564 Litigation  
FAX (515) 237-1643 Administration  
(515) 237-1748 Litigation

ALL-AMERICA CITY  
1949, 1976, 1981  
2003

CITY ATTORNEY

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KATHARINE J. MASSIER

CAROL J. MOSER

DOUGLAS P. PHILIPH

**Sec. 70-277. License required.**

(a) No person shall by use of any substance whatsoever, inclusive of spray paint, inscribe graffiti upon any structure, sidewalk or other property privately held **without the consent and under the direction of the owner**, with the owner to present to such person a license obtained from the city. No owner may permit or cause graffiti to be painted on surfaces not intended primarily for such use unless such owner obtains a license.

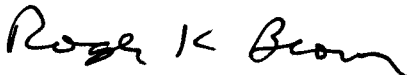
The City Clerk regularly issues Graffiti Permits to allow markings on the public streets and sidewalks incident to Street Use Permits and Farmer's Market Permits. In those cases, the use of the public right-of-way and its duration is authorized and controlled by the other permit, and the Graffiti Permit is viewed as a secondary use of the City property. The City Clerk has declined to issue a Graffiti Permit for the "Walk Your Butt to the Can" promotion because the proposed graffiti is not directly associated with an otherwise authorized use of the public sidewalks.

The placement of graffiti on the public sidewalks raises issues of aesthetics, public safety and free speech. Graffiti can be very unsightly, and even the most attractive graffiti can become unsightly with age and deterioration. An improperly painted sidewalk can also be extremely slick when wet or snow covered. Of the City allows the public sidewalks to be used for graffiti conveying private messages, the City cannot then unreasonably discriminate on the basis of the identity of the messenger or the content of the message.

It is within the authority of the City Council to approve or deny the installation of the anti-littering message on the public sidewalks as proposed by Operation Downtown. To a degree, the message conveyed by the proposed graffiti serves a public purpose, similar to a "No Littering" sign. Others might consider the graffiti to be offensive and unsightly.

Graffiti permits operate to approve the installation of graffiti. The permits and the associated City regulations do not address how long the graffiti may remain in place or who must remove it. That is left under the control of the property owner. When the City is the property owner, the current regulations leave those two issues unresolved. If the City Council is inclined to approve the use of the City sidewalks for this purpose, it would be appropriate to condition that approval on a requirement that Operation Downtown remove the graffiti after a specified time.

Sincerely,



Roger Brown

cc: Rick Clark, City Manager  
Diane Rauh, City Clerk  
Bruce Bergman, Corporate Council  
Larry Hulse, Community Development Director

# CITY OF DES MOINES GRAFFITI APPLICATION

FEE: \$50.00 PER EVENT

Name AMY LEGO Birth Date \_\_\_\_\_

Address 700 LOCUST ST, STE 100 Zip Code 50309

Daytime Phone 515 286 4962

Name of Organization OPERATION DOWNTOWN

Address 700 LOCUST ST, STE 100 Zip Code 50309

Daytime Phone 515 282 0378

Contact Persons:

Name	Daytime Phone
SCOT BLANCHARD	202 9615
AMY LEGO	286 4962

Name of Event "WALK YOUR BUTT TO THE CAN" Dates of Event ONGOING

Description, including size, of intended graffiti, with exact area and structures that will be the subject of the graffiti activity SEE ATTACHED

I have attached a diagram showing design of intended graffiti.

Type of marking material to be used MARKING SPRAY PAINT

Are you marking on the street?  Yes  No on the sidewalk?  Yes  No

Note: No person shall by use of any substance whatsoever, inclusive of spray paint, inscribe graffiti upon any structure, sidewalk or other property privately held without the consent and under the direction of the owner.

Application must be submitted thirty (30) days prior to proposed date of engaging in graffiti activity.

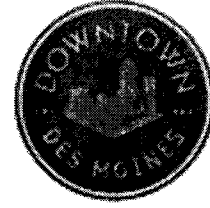
Signature Amy Lego

Date 8/22/08

For City Clerk's Office Use Only:

Receipt No. \_\_\_\_\_

## Graffiti Stencil Placement



- 1) Court Avenue Area
- 2) 3<sup>rd</sup> and Court Ave SE corner
- 3) Between 8<sup>th</sup> and 9<sup>th</sup> on Mulberry
- 4) Between Locust and Walnut St on 9<sup>th</sup>
- 5) 8<sup>th</sup> and Walnut St - north side
- 6) Between 6<sup>th</sup> and 7<sup>th</sup> on Walnut St - 3 Total
- 7) 5<sup>th</sup> and Walnut St - north side
- 8) 4<sup>th</sup> and Walnut Green Space
- 9) 7<sup>th</sup> Street south of Locust, west side of street
- 10) 10<sup>th</sup> and Locust south corner
- 11) E 5<sup>th</sup> between Locust and Grand - west side
- 12) Brenton Skating Plaza - 2 Total
- 13) High and Grand on 7<sup>th</sup> - 2 Total
- 14) 8<sup>th</sup> and Grand
- 15) 6<sup>th</sup> Avenue between Locust and Grand
- 16) 6<sup>th</sup> and Grand
- 17) 7<sup>th</sup> and Grand
- 18) Pleasant St and 15<sup>th</sup>
- 19) 10<sup>th</sup> and Chestnut - 2 Total
- 20) 8<sup>th</sup> and High
- 21) Between 7<sup>th</sup> and 8<sup>th</sup> on High

**For more information contact Operation Downtown at 286-4950**

CIGARETTE  
BUTTS ARE  
LITTER TOO

PLEASE

WALK YOUR BUTT  
TO THE CAN