

**Chapter 9.04**

**OFFENSES AGAINST PROPERTY**

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**Section 9.04.010 Vandalism, destruction of property and other related offenses.**

A. No person shall willfully and maliciously, intentionally and without right:

1. Break down, injure, remove or destroy a monument erected for, or tree marked for, the purpose of designating the boundaries of a town or of a tract or lot of land, or a milestone, mileboard or guideboard erected upon a public way or railroad, or deface or alter the description of any such stone or board;

2. Mar or deface a building or signboard, or extinguish a light, or break, destroy or remove a lamp, lamp post, railing or post erected on a bridge, sidewalk, public way, court or passage;

3. Deface or otherwise injure, remove, interfere with or destroy any traffic regulating sign, light signal, marking or device lawfully erected or placed under public authority on any public way;

4. Or wantonly and without cause, destroy, deface, mar or injure a schoolhouse, church or other building erected or used for purposes of education or religious instruction, or

for the general diffusion of knowledge, or an outbuilding, fence, well or appurtenance of such schoolhouse, church or building, or furniture, apparatus or other property belonging thereto or connected therewith;

5. Or wantonly and without cause, destroy, deface, mar or injure any playground apparatus or equipment located in a public park or playground;

6. Destroy, injure, deface or mar a dwelling house or other building, whether upon the inside or outside;

7. Mar or injure the wells, wainscoting or any other part of a courthouse, or any other building or room used for county business or any building belonging to the Commonwealth or any building belonging to the City or the appurtenances thereof, by cutting, writing or otherwise;

8. Maliciously remove, display, destroy, deface, mar or injure any monument, tablet or other device erected to mark an historic place or to commemorate an historic event.

B. Whoever violates any provision of this section in the presence of a police officer authorized to serve criminal process and the identity of such person is unknown to the officer, such person may be arrested by such officer and detained in a safe place without a warrant until his identity is ascertained. Reasonable diligence shall be exercised by the arresting officer in ascertaining the identity of the offender and when identified he shall be released from arrest unless a warrant was issued against him. If the offender is known to the police officer, he shall seek a complaint in court against such offender.

C. The organization(s) responsible for the distribution of posters or flyers with an intention that they be posted in violation of this section shall be responsible for the immediate removal of such posters or flyers and the names of organization(s) named on illegally posted posters or flyers shall be forwarded to the appropriate area businessmen's association so that the association may notify such organization that such acts are prohibited by City ordinance.

D. Upon conviction under this section, 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 finding. (Ord. 1092 (part), 1989; Ord. 964, 1981: prior code § 13-20)

**Section 9.04.020 Injuring or destroying public or private property.**

A. No person shall, without proper authority, paint on, write on, or otherwise injure, deface, destroy or vandalize any public building or any public or private property.

B. Any person who violates this section shall be subject to a fine of three hundred dollars. (Ord. 1049 § 1, 1987: prior code § 13-2)

**Section 9.04.030 Trespassing on public property.**

A. No person shall trespass on the roof of a public building or within a school building after regular school hours without the prior permission of a duly authorized public official.

B. At least two signs shall be posted on all public buildings with not less than one inch letters, not more than ten feet, and not less than six feet from the ground, black letters on white background as follows:

**City of Cambridge**  
No Trespassing and  
No Defacing of this public building.  
Violators will be prosecuted to the  
full extent of the law.  
**City Manager**

C. Any person who violates any provision of this section shall be subject to a fine of not more than one hundred dollars for the first offense, not more than two hundred dollars for the second offense and not more than three hundred dollars for subsequent offenses. (Ord. 1049 § 2, 1987: prior code § 13-3)

**Section 9.04.040 Construction of fences--Dangerous materials.**

No person shall erect or maintain anywhere in the City a fence equipped with or having razor wire or razor ribbon. Nor shall any person erect or maintain a fence equipped with

or having barbed wire, spikes or other dangerous materials, or any electric charge sufficient to cause shock, within ten feet of the ground level. (Ord. 1009, 1984: prior code § 13-17A)

**Section 9.04.050 Defacing public property.**

A. No person shall post or attach, or directly or indirectly cause to be posted or attached in any manner, any handbill, poster, advertisement or notice of any kind on public property except by permission of the City Manager or his designee, or on private property without the consent of the owner or occupant thereof.

B. Any handbill or sign found posted or otherwise affixed on any public property contrary to the provisions of this section may be removed by the Police Department or the Department of Public Works or the Inspectional Services Department.

C. The person or persons responsible for causing the unlawful posting of any notice described herein will be liable for the cost of removal and for the penalties described below. Persons liable under this section include, but are not limited to, any individual, corporation, partnership or other organization whose advertisement, message or information appears on the unlawfully posted notice.

D. Any person who violates this section shall be subject to a fine of three hundred dollars. Each illegally posted notice, advertisement, poster or sign shall be considered a separate violation of this section, and a separate offense shall be deemed committed on each day during or on which a violation of this section occurs or continues.

E. As an alternative to the penalty set forth in subsection D, whoever violates any provision of this section shall be penalized by a noncriminal disposition as provided in G.L., c. 40, §21D. For purposes of this section, the following officials shall be enforcing persons: Cambridge Police Officers and designated staff of the Cambridge Department of Public Works and the Inspectional Services Department.

Then noncriminal penalty for the first violation of this section shall be twenty-five dollars; for the second violation, one hundred

dollars; and for the third and all subsequent violations, two hundred dollars. (Ord. 1138, 1992)

**Section 9.04.060 Sale of certain paints and markers.**

A. No person shall, within the City, sell, display, expose or keep for sale any aerosol spray paint can, or any marker containing a fluid which is not water soluble and which has a point, brush, applicator or other writing surface in excess of one-half inch, unless at the point of display or sale there is posted a sign with letters not less than one and one-half inches in height bearing the following words:

Sale of spray paint and broad indelible markers to persons under eighteen and the unlawful purchase or possession of paints and such markers by persons under eighteen is punishable by a three hundred dollar fine.

nor shall any person sell or deliver any aerosol spray paint, or any marker containing a fluid which is not water soluble and which has a point, brush, applicator or other writing surface in excess of one-half inch to any person under eighteen years of age or to any person of whatever age who refuses to submit for inspection if requested a driver's license, liquor purchase identification or other identification to establish the age of such person, nor shall any person being under the age of eighteen purchase, conceal or remove from the premises such items; providing, that nothing in this section shall prevent the parent, guardian, employer or teacher of such a minor person from delivering such items to a minor intending the same to be lawfully used.

B. Any person who violates this section shall be subject to a fine of three hundred dollars. (Ord. 1049 § 3, 1987: prior code § 13-21)

**Section 9.04.070 Throwing objects in streets or on bridges.**

No person shall play ball or throw a stone or other missile in any street, or upon or from any bridge. (Prior code § 13-16)

**Section 9.04.080 Skateboarding Prohibited on City Property**

A. "Skateboard" is defined for purposes of this ordinance as a non-motorized vehicle consisting of a long footboard between two sets of wheels, with steering controlled by weight distribution.

B. "Skateboarding" is defined as one or more people being on a skateboard while the skateboard is moving.

C. Skateboarding is hereby prohibited on City property, except that skateboarding shall be permitted in city-owned and designated skateboard parks or other areas designated by the City.

D. Each violator of this ordinance may be fined up to fifty (\$50.00) dollars for each offense. Enforcement of this section may be by non-criminal disposition as provided by M.G.L. c.40, §21D. Police officers shall be the enforcement personnel.  
(1278, Added, 08/02/2004)

Attachment  
B

Thaila Sundaresan  
WilmerHale  
60 State Street, Boston, MA 02109

**Talking Points for May 18, 2014 Ordinance Committee Meeting – for the record**

- Good evening. My name is Thaila Sundaresan and I am an attorney at WilmerHale. WilmerHale and the American Civil Liberties Union of Massachusetts jointly represent PF Soto in her lawsuit against the City of Cambridge.
- As you know, Ms. Soto is a long-term Cambridge resident who founded a small volunteer group called UpandOUT, that raises awareness about important social and political causes that are not discussed in mainstream media.
- One of the group's key activities is a free documentary film screening that Ms. Soto hosts in the community room of her apartment building every month. Ms. Soto promotes these screenings by placing leaflets on parked cars. Other methods of outreach—such as mailings or person to person handouts—are expensive, time consuming, and not within Ms. Soto's means.
- On December 12, 2011, Ms. Soto was leafleting cars when she was stopped by a Cambridge police officer. He told her that she could not leaflet cars and that she was littering.
- After this encounter, Ms. Soto contacted the ACLU, who then reached out to the City to try and resolve this matter **without resorting to litigation**. The ACLU sent the City several court decisions that have **struck down** similar city ordinances that have prohibited leafleting. But the City insisted that it had an ordinance against such leafleting and that it would continue to enforce it against our client. It was only then that Ms. Soto reluctantly filed her lawsuit.
- As you all heard at the May 5th City Council meeting, Ms. Soto has significant support from the local community for her work. At that last meeting, 14 people spoke on her behalf and discussed the valuable public service that Ms. Soto provides with her film screenings. Not a single person spoke against her activities. Many recognized the importance of the First Amendment and its protection for peaceful expression.
- The Ordinance in question is entitled Defacing Public Property 9.04.050. The language, in relevant part, reads, "No person shall post or attach . . . any handbill, poster, advertisement or notice of any kind on public property. . . or on private property without the consent of the owner or occupant thereof." Note that the Ordinance does not explicitly prohibit objects from being placed on cars.
- We ask that the Ordinance Committee consider three potential options for resolving this matter:
- **First**, the Committee can simply determine that this Ordinance does not apply to Ms. Soto's leafleting. The dictionary definition of "defacing" property is to "ruin the surface or mar the appearance of something." Other cities that have defacement ordinances have

Thaila Sundaresan  
WilmerHale  
60 State Street, Boston, MA 02109

applied them in situations when the action in question results in a **permanent** alteration of property. For example, a defacement ordinance in Los Angeles uses words like “paint” “mark” and “write” because the ordinance’s concern is with activities like graffiti, which permanently alter property. *See* Los Angeles Municipal Code § 28.04.

- The Cambridge Defacement Ordinance uses language such as “post” and “attach” which are also words that connote permanence. The legal definition of “post” is to “affix”, which means to “add to, or fasten on **permanently**.” *See Black’s Law Dictionary* 712 (9th ed. 2009).
- Ms. Soto’s leaflets do not permanently alter property. The flyers can be removed from a car windshield as easily as they can be placed, and the car will look just the same as it did before. Leafleting is thus very different from activities like painting or writing, which result in a permanent defacement. The simplest solution is for the Ordinance Committee to determine that the Cambridge Ordinance does not apply to the type of leafleting that Ms. Soto engages in and to train police officers to that effect. Laws are frequently interpreted in a way to avoid serious constitutional issues.
- The **second** option is to repeal the Ordinance. Three US Circuit Courts of Appeal have struck down similar ordinances that have banned putting leaflets on car windshields as a violation of the First Amendment. These cases have held that the protection of private property is not a sufficiently substantial government interest to justify an across-the-board ban on placing leaflets on car windshields. These courts have also held that other avenues of communication, such as in person solicitation or door-to-door-leafleting, are not adequate alternatives because they are burdensome and resource-intensive. One US Circuit Court of Appeal has upheld such a ban, but the weight of authority is against such restrictions on expression.
- In addition, there are other ways for people to avoid such leaflets. For example, people can simply put a sign on their dashboard saying no leaflets, similar to a no solicitation sign on one’s front door or adding one’s phone number to a Do Not Call List. The Supreme Court has repeatedly held that “No Solicitation” signs are adequate protections for residents to bar solicitors. If “No Solicitation” signs are adequate protections for residences, they are ample protection for car owners to prevent unwanted solicitation. Accordingly, the Seventh and Ninth Circuits have adopted this approach for leafleting on parked cars.
- The **third** option is one that Councilmember McGovern raised at the May 5<sup>th</sup> City Council meeting, about whether the Ordinance could be amended to prohibit commercial speech only.
- Over 20 years ago, the then-Cambridge City Solicitor wrote an opinion letter explaining that placing **commercial** flyers on car windshields was prohibited under the Ordinance. Until now, the Ordinance has never been interpreted to apply to non-commercial leafleting.

Thaila Sundaresan  
WilmerHale  
60 State Street, Boston, MA 02109

- Ms. Soto's leaflets indisputably do not constitute commercial speech. She does not earn any money from her activities. Her film screenings are free to the public. In fact, considering the cost of making leaflets and purchasing refreshments and raffle prizes for the film screenings, Ms. Soto actually **loses money** every month from her activities.
- The courts that have struck down similar leafleting ordinances have not made any particular distinction between commercial and non-commercial speech, and we believe that making such a distinction would further complicate matters. However, if the Council wants to make such a distinction, the Council could amend the Ordinance by adding the word "commercial" – as in "No person shall post or attach...any commercial handbill, poster, advertisement or notice of any kind . . ." This would be a simple fix, although the Council should be aware that even commercial speech has significant First Amendment protection.
- The final point I want to make is that we have asked the City to suspend enforcement of the Ordinance while this suit is pending and while the City Council is reviewing the Ordinance. Unfortunately, the City has refused to do. We therefore ask the Ordinance Committee to resolve this matter as soon as possible so that Ms. Soto can leaflet without fear of getting fined or stopped by a police officer for exercising her constitutionally protected rights.
- Thank you for your consideration.