

GRAFFITI

§ 93.20 GRAFFITI ORDINANCE - PURPOSE AND INTENT.

The Monroe City Council is enacting this article to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The Council is authorized to enact this article pursuant to its police powers, in order to promote health, safety and welfare of its citizens, under the Charter of the City of Monroe and G.S. § 160A-174. The Council finds that graffiti is a public nuisance and dangerous to the public safety and welfare. Graffiti is destructive of the rights and values of property owners as well as the entire community. Unless the City acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City and its citizens. The City Council intends, through the adoption of this ordinance, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The Council does not intend for this ordinance to conflict with any existing anti-graffiti federal or state laws and to the extent of any such conflict, the provisions of the federal or state law shall control.

(Ord. O-2008-22, passed 5-20-08)

§ 93.21 DEFINITIONS.

The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this Graffiti Ordinance, except where the context clearly indicates a different meaning:

AEROSOL PAINT CONTAINER. An aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.

BROAD-TIPPED MARKER. Any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth of an inch, containing ink or other pigmented liquid that is not water soluble.

ETCHING EQUIPMENT. A tool, device, or substance that can be used to make permanent marks on any natural or manmade surface.

GRAFFITI. Any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council. However, ***GRAFFITI*** shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings on public or private sidewalks, streets or other paved surfaces which are used in connection with traditional children's activities, such as drawings, or bases for stick ball, kick ball, handball, hopscotch or similar activities, nor shall it be construed to prohibit temporary, easily removable chalk or other water soluble markings used in connection with any lawful business or public purpose or activity.

GRAFFITI IMPLEMENT. An aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

PAINT STICK or GRAFFITI STICK. Any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth of an inch in width.

PERSON. Any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

PROPERTY OWNER(S). Shall mean and include the owner of the property, such property owner's manager or agent, or any other person in lawful control or possession of the property.

(Ord. O-2008-22, passed 5-20-08)

§ 93.22 GRAFFITI DECLARED A NUISANCE.

The existence of graffiti on public or private property in violation of this section is hereby declared to be a public nuisance and dangerous to the public safety and welfare, and is therefore subject to the removal and abatement provisions specified in this section.

(Ord. O-2008-22, passed 5-20-08)

§ 93.23 GRAFFITI UNLAWFUL.

(A) *Defacement.* It shall be unlawful for any person to place graffiti upon any public or private property.

(B) *Possession of graffiti implement.*

(1) *By minors at or near school facilities.* It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property.

(2) *In designated public places.* It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the City or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the City.

(3) The provisions of this section shall not apply to the possession of graffiti implements 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 requires the possession of graffiti implements, nor to any person transporting graffiti implements while traveling to or from home or place of employment, nor to any other possession for a legitimate lawful use of such implements.

(Ord. O-2008-22, passed 5-20-08)

§ 93.24 REMOVAL OF GRAFFITI.

(A) *Removal by the perpetrator.*

(1) Any person applying graffiti on public or private property shall remove such graffiti or cause such graffiti to be removed within seventy-two (72) hours after notice from the city or the owner of the property involved. If the graffiti is applied by a person under the age of eighteen (18), the parents or legal guardians of such minor shall be responsible for such removal.

(2) It shall be unlawful for any person who has applied graffiti to fail to remove such graffiti within seventy-two (72) hours after receipt of notice to remove the graffiti. If the perpetrator fails to remove the graffiti within the time allowed, the property owner or City may abate the nuisance pursuant to subsection (B) of this section and the perpetrator will be responsible for the abatement costs.

(B) *Removal by the City.*

(1) Whenever the City becomes aware of the existence of graffiti on private property, the City is authorized to remove the graffiti as set forth in this subsection after first giving notice to the property owner to remove or effectively obscure such graffiti as provided in this subsection. The notice shall be given by certified mail, return receipt requested, or by personal service, and shall contain the following:

(a) The street address or other description of the property sufficient for identification of the property.

(b) A statement that the property is a public nuisance due to the existence of the graffiti.

(c) A statement that the graffiti must be removed or effectively obscured within seven (7) days after receipt of the notice and that if the public nuisance created by the graffiti is not abated within that time the City will abate the public nuisance.

(2) If the property owner fails to remove or effectively obscure the graffiti within the prescribed seven (7) days after receipt of notice described above, the City may cause the graffiti to be removed or effectively obscured.

(3) *Appeal.* Any property owner who receives a notice to remove or obscure graffiti may appeal to the City Manager within

seven (7) days of receipt of the notice. The appeal notice shall be in writing and state the reasons for the appeal. The City Manager, or designee, shall set a hearing within seven (7) business days after receipt of the notice of appeal. If, on appeal, the City Manager, or designee, determines that the graffiti is a public nuisance and must be removed, the City Manager, or designee, shall establish a new date for removing or obscuring the graffiti. The City shall not remove or obscure graffiti until a decision has been rendered by the City Manager, or designee.

(4) *Emergency removal.* If the City determines that any graffiti is an imminent danger to the safety or welfare of the public it shall prepare a notice as described in subsection (e)(2)a., which shall serve as an emergency notice, including a specific allegation of how the safety or welfare of the public is in jeopardy and why the graffiti constitutes an imminent danger. If the City is unable to provide personal service of this emergency notice after two (2) attempts to do so, then the City may remove the graffiti at its own expense after posting such property with said notice. If a property owner receives notice that emergency removal has been deemed necessary by the city the property owner shall:

(a) Cause the immediate removal of the graffiti or cause the graffiti to be obscured or;

(b) Give permission to the City to obscure or remove the graffiti at the city's cost or;

(c) Immediately obtain appropriate relief from a court of competent jurisdiction directing the city to stop any attempt to obscure or remove any graffiti.

(5) *Repairs/restoration.* In no case shall the City paint or repair any area defaced by graffiti more extensively than where the graffiti itself is located. The City shall not be required to restore the obscured area to its original condition (i.e. exact color, texture etc.)

(Ord. O-2008-22, passed 5-20-08)

§ 93.25 PENALTIES.

(A) *Criminal.*

(1) *Conviction.* Each violation of §§ 97.04 and 97.05(A) shall constitute a misdemeanor, except as otherwise provided by statute, and shall be punished by a fine not exceeding \$500.00 or imprisonment of a term not exceeding 30 days.

(2) *Restitution.* In addition to any punishment imposed, the court may order any person convicted of a violation of this article to make restitution to the victim or entity which remediated the graffiti for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. The court may determine the amount, terms and conditions of the restitution. In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make restitution.

(3) *Community service.* In addition to, or as a part of, the penalties specified in this section, a minor or adult may be required to perform community service as described by the court. Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that involves graffiti removal.

(Ord. O-2008-22, passed 5-20-08)

§ 93.26 SEVERABILITY.

Severability is intended throughout and within the provisions of the ordinance. If any section, subsection, sentence, clause, phrase or portion of this chapter is held to be invalid or unconstitutional by a court of competent jurisdiction, then the decision shall not affect the validity of the remaining portions of this chapter.

(Ord. O-2008-22, passed 5-20-08)