

ORDINANCE AMENDING CHAPTER 38, ARTICLE 1,
SECTION 15.1 RELATING TO GRAFFITI,
POSSESSION OF SPRAY PAINT

BE IT ORDAINED by the Winston-Salem City Council as follows:

Section 1: Sec. 38-15.2. Injuring, or destroying public property; graffiti declared public nuisance; removal of graffiti from public and private property. is hereby amended as follows:

(a) It shall be unlawful for any person to willfully destroy, injure, carry away, break or deface any ornament, street sign, lamp, railing, fixture, gate, seat, bench, swing, fountain, tool, machinery; nor shall any person pull any flowers, or cut or injure in any way any tree, shrub, plant, vine or other property belonging to the city within or upon any of its streets or parks.

(b) Graffiti is destructive of the rights and values of property owners as well as the entire community. Unless the city council acts to remove graffiti from public and private property, the graffiti may remain. Other properties then become the target of graffiti and entire neighborhoods are affected and become less desirable places in which to live, all to the detriment of the city. The city council intends, through the adoption of this section, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The city council does not intend this section to conflict with existing anti-graffiti state laws, including but not limited to malicious injury to property.

(1) *Definitions.*

Graffiti means any 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 a graffiti implement, without the prior written consent of the property owner. Graffiti as defined herein shall constitute a nuisance. However, it 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 stickball, kickball, 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 means any aerosol paint container, broad tipped marker, stick on label, paint stick, paint, etching equipment, brush or other device capable of scarring or leaving a visible mark on any natural or man-made surface.

Legal guardian shall include a person appointed guardian, or given custody, of a minor by a court of this state.

Minor shall mean a person who has attained eleven (11) years of age but who has not yet reached eighteen (18) years of age.

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

Property owner shall mean and include the owner of the property, such property owner's agent or any person in lawful control or possession of the property.

Pro-active measures: Physical measures initiated to prevent graffiti; such as, but not limited to:

- (1) Using fences, controlled entrance and exits, rails and other barriers that discourage through traffic;
- (2) Limiting access to roofs by moving dumpsters away from walls and covering; drainpipes to prevent vandals from scaling them;
- (3) Incorporating shrubs, thorny plants and vines to restrict vandal access;
- (4) Adding or improving lighting around the building to promote natural surveillance;
- (5) Installing some type of security camera;
- (6) Mounting a community paint brush mural on a chronically hit wall; as recommended by resources, such as Graffiti Hurts, Graffiti Prevention: Tips for Businesses. It is the responsibility of the property owner to establish proof that pro-active measures have been completed.

(2) *Prohibited act.* Any person who applies graffiti to any natural or man-made surface of any city-owned or private property without the permission of the owner or occupant shall be subject to prosecution in accordance with the statutes relating to malicious injury to property, G.S. 14-127, G.S. 14-160 or any other applicable statute.

(3) *Removal of graffiti by perpetrator.* Any person applying graffiti on public or private property shall have the duty to remove the graffiti within 24 hours after notice by the city or private property owner of the property involved. This notice may be given in any manner deemed appropriate by the city or private property owner. Such removal shall be done in a manner that effectively removes or obscures the graffiti. The costs of removal or obscuring shall be borne by the person applying the graffiti. Failure of any person to remove or obscure the graffiti or pay for such costs shall constitute an additional violation of this section. Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall also be responsible for such abatement or the costs thereof.

(4) *Removal of graffiti by property owner or city.* If the graffiti is not removed by the perpetrator in accordance with subsection (3) above, the graffiti shall be removed pursuant to the following provisions:

a. *Property owner responsibility.* It is unlawful for any property owner to permit property that is defaced with graffiti to remain defaced for a period of five days after service of the abatement notice. Said abatement notice shall be served upon the property

owner by the city by personal service, by registered mail or certified mail in conjunction with regular mail and posting. If regular mail is used, a notice of the violation shall be posted in a conspicuous place on the premises in violation. If the regular mail is not returned within ten days, service shall be deemed sufficient. If the certified mail is claimed before the ten-day process for regular mail, the five-day abatement notice period shall commence running based upon the earliest service date. The abatement notice shall contain the following information: street address and tax block and lot, if any; general description of the graffiti; instructions to effectively remove or obscure the graffiti within five days after receipt of notice and notice that if not abated within that time, the city will officially declare the graffiti a nuisance and remove or obscure the same in accordance with this section; notice of the process for requesting a hearing; and information identifying any graffiti removal assistance program(s) available through the city and private graffiti removal contractors, if known.

b. *Right of city to remove; use of public funds.* Whenever the city becomes aware of or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the city shall be authorized to use public funds for the removal, painting, obscuring or repairing of the graffiti, but shall not be authorized or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the property owner agrees to pay for the additional cost of repainting, obscuring or repairing the more extensive area.

c. *Right of entry on private property.* Prior to entering upon private property or property owned by a public entity other than the city for the purpose of graffiti removal, the city shall attempt to secure the consent of the property owner and a release of the city from liability for property damage or personal injury. If the property owner is unavailable or has refused consent for entry on terms acceptable to the city and consistent with this section, the city shall obtain an administrative inspection warrant, if inspection is necessary. If the property owner fails to remove the graffiti within the time specified by this section or if the city has requested consent to remove or paint over the graffiti and the property owner has refused consent, the city may apply to the court for remedies available in G.S. 160A-175, including an order of abatement. The cost of obtaining said order shall be a lien in accordance with G.S. 160A-193.

d. *Hearing.* The property owner shall have the right to request a hearing to show cause why the graffiti specified in the abatement notice should not be removed. The hearing must be requested in writing within five days of receipt of the abatement notice delivered either in person to the neighborhood services director or by certified mail return receipt requested. The neighborhood services director or his designee shall serve as the hearing officer. If after the hearing, regardless of the attendance of the owner, the hearing officer determines that the property contains graffiti viewable from a public or quasi public place, the hearing officer shall give written notice of such in an abatement order and provide further that, unless the graffiti is removed or obscured within five days, the city shall enter upon the property, cause the removal, painting over (in such color and manner to effectively obscure and minimize distinctions between the graffiti and non-graffiti surfaces) and shall provide the owner thereafter with an invoice regarding the costs as set

forth in subsection e. herein unless other non city avenues, such as volunteers or community service workers, are available to defray the costs.

e. *Lien.* If the property owner is not eligible for financial assistance through a city program, the cost of removal or for obscuring of said graffiti shall be \$25.00 for each occurrence up to and including the third occurrence. After the third occurrence, if the property owner initiates pro-active measures to prevent future occurrences, the removal charge shall remain at \$25.00 for each occurrence. If there are no pro-active measures initiated to prevent future occurrences, for the fourth occurrence up to and including the seventh occurrence, the fee shall be \$50.00 per occurrence. After the seventh occurrence, if the property owner initiates pro-active measures to prevent future occurrences, the removal charge shall remain at \$50.00 for each occurrence. If there are no pro-active measures initiated to prevent future occurrences, for the fourth occurrence up to and including the seventh occurrence, for the eighth and subsequent occurrences, the fee shall be \$100.00 per occurrence. Any abatement costs not paid within 30 days shall constitute a lien in accordance with G.S. 160A-193.

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

~~(5) The provisions of this section shall not apply to the servants, employees or officers of the city actually and necessarily engaged in the duties of their office or employment.~~

(5) *Possession by minor of spray paint.*

a. *In designated public places.* It shall be unlawful for a minor to possess spray paint 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 under circumstances manifesting the intent to violate any provision of this section, unless otherwise authorized by the city. Circumstances manifesting the intent of a minor to violate this section include:

1. The possession, in plain view, of spray paint by a minor in one or more of the designated public places; or
2. A positive identification of a minor by an witness to the application of spray paint upon a prohibited surface in one or more of the aforementioned designated public places; or
3. Coverage of a minor's hands with spray paint while the minor is in one or more of the designated public places.

b. *Penalty.* A violation of subsection (5) herein shall constitute Class 3 misdemeanor and shall subject the offender to a fine of not more than \$500.00. In addition to any other

punishment imposed, the court may order the person convicted of a violation of any provision of this section to make restitution to the victim for the damage or loss suffered by the City as a result of the offense. The court may determine the amount, terms, and conditions of restitution.

(6) *Severability.* Severability is intended throughout and within the provisions of this section. If any section, subsection sentence, clause, paragraph or portion thereof is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of any of the remaining portions of this section.

(7) *Exemption.* The provisions of this section shall not apply to the servants, employees or officers of the city actually and necessarily engaged in the duties of their office or employment or city volunteers engaged in the duties of their assignment.

(8) *Free Speech.* This section shall not be interpreted as prohibiting any person from engaging in activities protected by the First Amendment to the United States Constitution nor shall it be interpreted as authorizing a search in violation of the Fourteenth Amendment to the United States Constitution.

Section 2. This ordinance shall be effective upon adoption.