

Chapter 98: GRAFFITI

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§ 98.01 PURPOSE AND INTENT.

It is the purpose and intent of the Board of Commissioners of the Town of Franklinton, through the adoption of this ordinance, to declare and find that graffiti on public and private property is a blighting factor which not only depreciates the value of the property which has been the target of such malicious vandalism, but which also depreciates the value of the adjacent and surrounding properties and thereby negatively impacts the entire community. This chapter shall provide a procedure for removal of graffiti from walls and structures on both public and privately owned property and to protect the public safety, and to provide for the recovery of costs of such removal.

The Board of Commissioners further finds and determines that the inscription of graffiti may be associated with criminal activity and finds that the presence of graffiti unlawful on any property shall prosecute offenders to the maximum extent allowed by law. **Statutory reference:** (NCGS §160A-193) (NCCL §19-4)

§ 98.02 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GRAFFITI. Any unauthorized or non-permitted 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, and applied for and approved for a zoning certificate by the Zoning Administrator in accordance with this chapter.

(Note: To avoid prohibiting legitimate artwork, the graffiti definition only includes markings that are unauthorized or otherwise deemed by the Town Manager to be public nuisances.) Ref. §154.100

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.

§ 98.03 GRAFFITI PROHIBITED.

(A) Defacement

It shall be unlawful for any person to apply graffiti to any public or privately owned structure located on public or privately owned property within the Town limits and Extra Territorial Jurisdiction.

It shall be unlawful for any owner, leasee, occupant or other person having present possession of a lot or parcel of land within the Town to:

(1) Permit graffiti to remain upon such lot or parcel of land or;

(2) To maintain any structure affixed to such lot or parcel or lend with graffiti on such structure or any portion thereof, for a period in excess of ten (10) calendar days following service by the Town of a notice to abate graffiti.

(B) Possession of Graffiti Implements. 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 Town or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure with the intent to comment a violation in accordance with this chapter and authorized by the Town.

(C) Accessibility to Graffiti Implements. Furnishing for Graffiti Purposes Prohibited. No person, other than a parent or legal guardian, shall sell, exchange, give, loan, or otherwise furnish, or cause to permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any person knowing or having reason to believe that said person intends to use the same in violation of this Ordinance.

(D) Graffiti as a Nuisance. The existence of graffiti on public or private property in violation of this ordinance is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this ordinance.

It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to keep the property clear of unauthorized graffiti at all times.

§ 98.04 REMOVAL OF GRAFFITI. Notice and order to abate nuisance.

For the purposes of this chapter, the respondent is the person in possession of the property where a public nuisance (as described in §98.02) is located, as well as the owner of such property, if different from the former.

Upon determination by the Town that there exists on any property conditions constituting a public nuisance (as described in §98.02) the Town shall notify the respondent by certified and first class mail of such conditions and shall order the abatement thereof within ten (10) days of the date of such notice. If the certified mail notice is unclaimed or refused but the first class mail is not returned within (10) ten days after the mailing, the first class mail shall be sufficient to provide notice.

If after due diligence the respondent's correct address cannot be determined, then a required notice shall be posted conspicuously on the offending property. The posted notice shall order the abatement of the nuisance within (10) ten days of the posting of the notice. Failure to give notice, as set forth herein shall not affect the enforcement of this chapter.

§ 98.05 APPEAL.

At any time before the expiration of the ten (10) days abatement period specified in §98.04, the respondent may request a hearing before the Town Manager to appeal the finding of the Town that graffiti exists on the premises. Upon completion of the hearing, the Town Manager shall consider the evidence and shall either revoke the initial order, issue a final order, which differs from the initial order, or reinstate the initial order as a final abatement order.

Cost hearing. If the Town has caused the abatement of the graffiti as defined in §98.02, at any time within thirty (30) days of the owner's receipt of a statement of charges from the Town for the removal of the graffiti, the property owner may request a hearing before the Town Manager to appeal the charges and the finding of the Town that graffiti existed. Upon completion of the hearing, the Town Manager shall consider the evidence and shall either uphold, modify or revoke the charges resulting from the abatement by the Town.

Request submitted. Any request for a hearing pursuant to this chapter must be in writing and must be filed in the office of the Town Manager. The Town Manager shall fix a time for the hearing, and the initial abatement order or the accrual of interest on the statement of charges shall be temporarily suspended pending such hearing. The hearing must be held by the Town Manager within thirty-one (31) calendar days following receipt of the request for hearing by the office of the Town Manager. At the hearing, the individual affected by the order shall be given the opportunity to present evidence to refute the findings, which supported the abatement order or the removal of the nuisance condition.

§ 98.06 ABATEMENT BY TOWN.

Upon the occurrence of either of the following conditions:

(A) A hearing is requested and held under §98.05 resulting in either a final order with modifications or the reinstatement of the initial order as a final order, and such order is not complied with within ten (10) days from adjournment of the hearing;

(B) No hearing is requested or held, and the respondent having been ordered to abate such public nuisance fails, neglects or refuses to abate or remove the condition constituting the nuisance within ten (10) days from the date of said order, or

(1) The property owner fails to abate conditions constituting the nuisance within ten (10) days of notification of the owner of such conditions;

Then the Town shall cause the nuisance to be removed or otherwise remedied by having employees of the Town or designee go upon said premises and remove or otherwise abate the graffiti under the supervision of a police officer or other employee of the Town.

§ 98.07 CHARGES FOR ABATEMENT BY TOWN.

Should the Town be required to abate the graffiti as a public nuisance as set forth in this chapter, all costs incurred by the Town in removing or otherwise remedying the nuisance shall be charged to the owner of the offending property.

In the event charges for the removal or abatement of the graffiti are not paid within thirty (30) days after the receipt of a statement of charges from the Town, a lien shall be placed upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes.

Statutory reference: NCGS 160A-193.

§ 98.08 PENALTIES.

CRIMINAL OFFENSES.

Where there is a reported violation of any provision of this Ordinance, which such violation is observed by a Town Police Officer, or in the event that a Town Police Officer observes a violation in the absence of a report, the Town Police Officer may issue a citation subjecting the violator to civil and criminal penalties as set forth below:

(A) Any violation of this chapter shall subject the offender to a civil penalty in the amount of two hundred fifty dollars (\$250);

(B) Any subsequent violation shall be a separate and distinct offense, which shall subject the offender to an additional civil penalty in the amount of five hundred dollars (\$500);

(C) In addition to or in lieu of remedies authorized in subsections (A) and (B) above, violations of this chapter may be prosecuted as a general misdemeanor with a fine of \$50.00 plus court costs in accordance with N.C.G.S. § 160A-175.

Restitution. In addition to any punishment specified in this chapter, the court may order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. (Ord. passed 08-21-07)