

TOWN OF SMYRNA, TENNESSEE
ORDINANCE NO. 06- 47

AN ORDINANCE relative to the adoption and enactment of Title 11 (Municipal Offenses), Chapter 15, "Graffiti".

- WHEREAS**, the general assembly of the State of Tennessee has found and declared, for the purposes of promoting the public safety, health, welfare, convenience and enjoyment, of protecting the public investment in public property, and of preserving and enhancing the scenic beauty of property visible from publicly owned property, that graffiti constitutes a public nuisance that may be abated; and
- WHEREAS**, the Town Council of the Town of Smyrna concurs in the findings of the general assembly related to graffiti; and
- WHEREAS**, the Town Council finds that graffiti vandalism has grown from an exclusively urban concern to a problem that now affects small communities, including the Town of Smyrna; and
- WHEREAS**, the Town Council finds that graffiti vandalism is a blighting factor which deteriorates property and depreciates the value of property and the value of adjacent and surrounding properties; and
- WHEREAS**, the Town Council finds that the existence of graffiti tends to breed community discontent and criminal activity and that prompt removal of graffiti is necessary to prevent its proliferation;
- WHEREAS**, the Town Council finds that the presence of graffiti is inconsistent with the Town's aesthetic standards;
- WHEREAS**, the Town Council finds that property owners, tenants, and occupants have a duty to maintain the appearance of their property, including a duty to promptly remove graffiti; and
- WHEREAS**, it is in the best interest of all citizens of the Town of Smyrna that graffiti be removed; and
- WHEREAS**, in accordance with the Charter of the Town of Smyrna, Tennessee, Article 2, Section 2.01(7), the Town Council shall have the power to expend the money of the municipality for all lawful purposes; and
- WHEREAS**, in accordance with the Charter of the Town of Smyrna, Tennessee, Article 2, Section 2.01(18), the Town Council shall have the power to acquire, purchase, provide for, construct, regulate and maintain and do all things relating to all marketplaces, public buildings, bridges, sewers and other structures, works and

improvements inside and outside the municipality; and

WHEREAS, in accordance with the Charter of the Town of Smyrna, Tennessee, Article 2, Section 2.01(22), the Town Council shall have the power to define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, business, occupations, callings, trades, use of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers; and

WHEREAS, in accordance with the Charter of the Town of Smyrna, Tennessee, Article 2, Section 2.01(23), the Town Council shall prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained; and

WHEREAS, in accordance with the Charter of the Town of Smyrna, Tennessee, Article 2, Section 2.01(32), the Town Council shall have the power to plan for the orderly development of the community, including economic, physical, educational and cultural aspects, and to institute programs to effectuate such plans; and

WHEREAS, in accordance with the Charter of the Town of Smyrna, Tennessee, Article 2, Section 2.01(35), the Town Council shall have to power to exercise and have all other powers, functions, rights, privileges and immunities granted by general law or necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, morals, and general welfare of the town and its inhabitants, and all implied powers necessary to carry into execution all powers granted in the Charter of the Town of Smyrna, Tennessee.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SMYRNA:

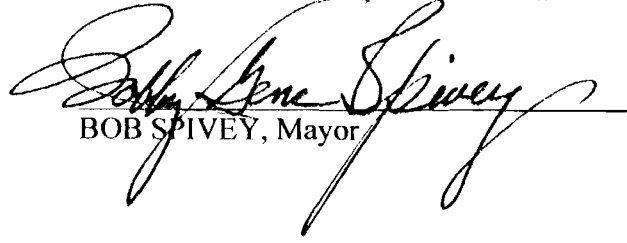
Section 1. That Title 11, Chapter 15, "Graffiti" as specified in Exhibit A attached hereto and incorporated herein by reference as if set forth at length verbatim, is hereby adopted and enacted, the health and welfare of the Town of Smyrna requiring it.

Section 2. This ordinance shall take effect immediately upon its adoption on second and final reading, the public health and welfare of the Town of Smyrna requiring it.

PASSED on first reading by the Town Council the 12th day of September, 2006.

PASSED on second reading by the Town Council the 10th day of October, 2006.

TOWN OF SMYRNA, TENNESSEE


BOB SPIVEY, Mayor

ATTEST:


DIANNE WALDRON, Town Clerk

CHAPTER 11

GRAFFITI

SECTION

- 11-1101. Intent and findings.
- 11-1102. Declaration of public nuisance.
- 11-1103. Terms defined.
- 11-1104. Graffiti unlawful.
- 11-1105. Removal of graffiti.
- 11-1106. Notice to owner, possessor of property.
- 11-1107. Authorization to use municipal funds.
- 11-1108. Authorization for the municipality to remove graffiti.
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- 11-1110. Reimbursement to municipality.
- 11-1111. Reward for information.
- 11-1112. Violations.

11-1101. Intent and findings. Graffiti on public and private property is a blighting factor which deteriorates property and also depreciates the value of the property and the value of the adjacent and surrounding properties. The town council of the Town of Smyrna concurs with the findings of the general assembly of the State of Tennessee related to graffiti. It is the town council's intent to provide for the prohibition of the placement of graffiti on public and private property as herein set forth. Graffiti is inconsistent with the town's aesthetic standards, and unless it is quickly removed from public and private properties, other adjacent properties will become the target of graffiti. The existence of graffiti tends to breed community discontent and criminal activity. The prompt removal of graffiti is necessary to prevent its proliferation. While the property and its owner or possessor is a victim of the graffiti, it is always the duty of the property owner or possessor to remove graffiti as soon as reasonably possible. To assist in preventing and controlling the further spread of graffiti, town council authorizes the use of town funds to remove graffiti on public and private property as set forth herein and as provided in accordance with Tennessee Code Annotated, §6-54-127. (Ord. #06-47, Oct. 2006)

11-1102. Declaration of public nuisance. For the purpose of promoting the public safety, health, welfare, convenience and enjoyment, to protect the public investment in public property, and to preserve and enhance the scenic beauty of property visible from publicly owned property, the town council of the Town of Smyrna finds and declares that graffiti constitutes a public nuisance that may be abated and curtailed in accordance with the laws of this state. (Ord. #06-47, Oct. 2006)

11-1103. Terms defined. (1) "Advertising" shall for purposes of this section mean any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner or tenant of the property, or an agent of such owner or tenant, for the purpose of promoting products or services or conveying information to the public.

(2) "Graffiti" shall mean, without limitation, any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, fences, gate, building or other structure; provided, this definition shall not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, by an authorized agent for such owner or tenant, or unless otherwise approved by the owner or tenant.

(3) "Publicly owner property" shall mean the property owned or controlled by a federal, state, or local governmental entity, including, but not limited to, public parks, streets, roads and sidewalks.

(4) "Tenant" shall mean any person shown by the records of the register of deed's office as a lessee of property, or any person lawfully in actual physical possession of property. (Ord. #06-47, Oct. 2006)

11-1104. Graffiti unlawful. (1) It shall be unlawful for any person to write, paint, inscribe, scratch, scrawl, spray, place or draw graffiti of any type on any public or private building, structure or any other real or personal property.

(2) It shall be unlawful for any person to possess, while in any public building or facility, or while on private property, any of the following materials with the intent to use such materials to violate subsection (1) and/or subsection (3): spray paint containers, paint, ink, marking pens containing non-water soluble fluid, brushes, applicators or other materials for marking, scratching, or etching.

(3) It shall be unlawful for the owner and/or occupant of fixed real or personal property located within the public view to place or give permission to place graffiti, as defined herein, on said real or personal property if the graffiti tends to incite violence by referring to gang or criminal activity, depicts or expresses obscenity as defined by Tennessee Code Annotated, § 39-17-901 or contains defamatory material about a public or private person, except as otherwise allowed by law. (Ord. #06-47, Oct. 2006)

11-1105. Removal of graffiti. It shall be unlawful for any person owning property, acting as manager or agent for the owner of property, or in possession or control of property to fail to remove or effectively obscure any graffiti upon such property. (Ord. #06-47, Oct. 2006)

11-1106. Notice to owner, possessor of property. (1) In the event that the police department finds that graffiti exists, the chief of police or his designee, shall mail or deliver a written order to the owner and possessor of the subject real property, addressed to the owner's last known address and to the property address. Notice may also be accomplished by posting the order in a clearly visible location on the subject property. The written order should contain the following:

- (a) A description of the real estate sufficient for identification;
 - (b) Inform the owner/possessor that the police department has found graffiti exists on the property; and
 - (c) An order that the owner and/or possessor remove or obliterate the graffiti within fifteen (15) days;
 - (d) Inform the owner that graffiti has been declared a public nuisance and that failure to remove the graffiti may result in further civil action by the town; and
 - (e) Inform the owner that failure to remove graffiti is unlawful and may result in citation to municipal court.
- (2) By written request, the 15-day time period for removal of graffiti may be waived due to weather conditions by the chief of police.
- (3) The property owner may also request assistance, in writing, for the graffiti removal based on the owner's inability to perform removal.
- (4) A property owner, occupant, or lessee may appeal the order to remove the graffiti by filing a written appeal with the town manager before the expiration of the 15-day time period. The town manager shall place the appeal for consideration by the town council at the next regularly scheduled town council meeting. (Ord. #06-47, Oct. 2006)

11-1107. Authorization to use municipal funds. The municipality may use municipal funds to remove graffiti or other inscribed material from publicly owned real or personal property or privately owned real or personal property visible from publicly owned property and located within the Town of Smyrna and to replace or repair publicly owned property or privately owned property visible from publicly owned property within the Town of Smyrna that has been defaced with graffiti or other inscribed material. The town manager, or his designee, may authorize the use of municipal funds for the purposes described herein in an amount up to one thousand dollars (\$1,000.00). Expenditure of amounts in excess of one thousand dollars (\$1,000.00) shall be submitted for town council approval. (Ord. #06-47, Oct. 2006)

11-1108. Authorization for the municipality to remove graffiti. The municipality may remove graffiti or other inscribed material, or if the graffiti or other inscribed material cannot be removed cost-effectively, repair or replace that portion of the property that was defaced, but the municipality may not paint, repair, or replace other parts of the property that were not defaced

by graffiti. Written consent of the property owner and possessor of the property, if not the same, shall be obtained. The written consent shall contain method of removal of the graffiti. (Ord. #06-47, Oct. 2006)

11-1109. Authorization to use persons assigned to perform community service. The municipality may use persons assigned to perform community service work, as ordered by a general sessions, criminal, or juvenile court, to perform graffiti removal services under supervision. (Ord. #06-47, Oct. 2006)

11-1110. Reimbursement to municipality. In the event the person or persons responsible for the graffiti are convicted and the court orders the offender(s) to pay restitution for the cost of the clean up, and the town has expended funds to remove the graffiti, the restitution shall be directed to the town as reimbursement for the cost of the clean up. (Ord. #06-47, Oct. 2006)

11-1111. Reward for information. The town shall pay a reward of two hundred fifty dollars (\$250.00) to person(s) who report information to the police department, which information leads to the arrest and conviction of any person who unlawfully applies graffiti to any public property or private property visible from the public right-of-way. The determination of the reward shall be made by the chief of police or his designee. (Ord. #06-47, Oct. 2006)

11-1112. Violations. Any person, firm, or corporation, whether owner, occupant, or lessee, violating or failing to comply with any provision of this chapter or any notice or order issued pursuant to its provisions, shall be punished by a fine not to exceed the state authorized maximum of fifty dollars (\$50.00) per violation. Each day that a violation continues shall be deemed a separate offense and punishable as such. (Ord. #06-47, Oct. 2006)