



GRAFFITI ORDINANCE

BE IT ORDAINED by the Rural Hall Town Council as follows:

Injuring or destroying public property; graffiti declared public nuisance; removal of graffiti from public and private property.

- (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 Town 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 Town Council acts to remove or directs the removal of 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 Town. The Town 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 Town Council does not intend this ordinance 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 manmade 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 not yet reached 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, including leased/rented property.

Proactive 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;
- (2) *Prohibited act.* Any person who applies graffiti to any natural or manmade surface of any Town-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 Town or private property owner of the property involved when reasonable evidence of who applied the graffiti exists. This notice may be given in any manner deemed appropriate by the Town 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 ordinance. 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 Town.* 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 fifteen (15) days after service of the abatement notice. Said abatement notice shall be served upon the property owner by the Town 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 calendar 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 fifteen (15) days after receipt of notice and notice that if not abated within that time, the Town will officially declare the graffiti a nuisance and remove or obscure the same in accordance with this ordinance; notice of the process for requesting a hearing; and information identifying private graffiti removal contractors, if known.
 - b. *Right of Town to remove; use of public funds.* Whenever the Town becomes aware of or is notified and determines graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the Town 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 in writing to pay for the additional cost of repainting, obscuring or repairing the more extensive area, in which case the estimated cost must be paid to the Town in advance.
- c. *Right of entry on private property.* Prior to entering upon private property or property owned by a public entity other than the Town for the purpose of graffiti removal, the Town shall attempt to secure the consent of the property owner and a release of the Town 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 Town and consistent with this ordinance, the Town Manager shall cause said condition to be removed or otherwise remedied by having employees of the Town to go upon said premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the Town Manager. If the property owner fails to remove the graffiti within the time specified by this ordinance or if the Town has requested consent to remove or paint over the graffiti and the property owner has refused consent, the Town 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 Town Manager or by certified mail return receipt requested. The Town Manager or his/her designee shall serve as the hearing officer. If after the hearing, regardless of the attendance of the owner, the hearing officer determines 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 Town 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 the fee schedule in effect at the time the abatement occurs.
 - e. *Lien.* The cost of removal or for obscuring of said graffiti shall be consistent with the fee schedule in effect at the time the abatement occurs. Any abatement costs not paid within 30 days shall constitute a lien in accordance with G.S. 160A-193.
- (5) *Penalty.* A violation of this ordinance shall constitute a class 3 misdemeanor and shall subject the offender to a fine of not more than \$500. In addition to any other punishment imposed, the court may order the person convicted of a violation of any provision of this ordinance to make restitution to the victim for the damage or loss suffered 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 ordinance. If any ordinance, 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 ordinance.
 - (7) *Exemption.* The provisions of this ordinance shall not apply to the servants, employees or officers of the Town actually and necessarily engaged in the duties of their office or employment or Town volunteers engaged in the duties of their assignment.

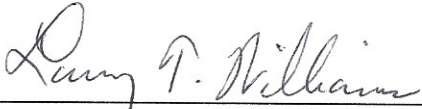
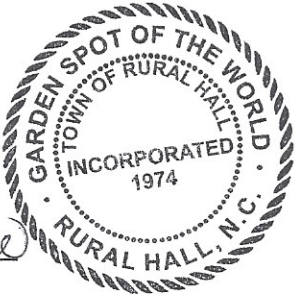
(8) *Free speech.* This ordinance shall not be interpreted as prohibiting any person from engaging in activities protected by the First Amendment to the United States Constitution nor shall it be interpreted as authorizing a search in violation of the Fourteenth Amendment to the United States Constitution.

Adopted this 13 day of August, 2018.

ATTEST:



Dora K. Moore, Town Clerk



Larry T. Williams, Mayor