

TOWN OF VASS
AN ORDINANCE PROHIBITING GRAFFITI, POSSESSION OF GRAFFITI
IMPLEMENTS AND REMOVAL OF GRAFFITI

WHEREAS, The Town of Vass has in recent years experienced an increase in vandalism of both public and private property as a result of the placement of graffiti on buildings, walls, structures and other surfaces within the Town;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Vass that Chapter 26 of the Code of Ordinances is amended by adding the following as Article III:

Sec. 26-71. Purpose and intent.

The town board 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 board is authorized to enact this article pursuant to its police powers, in order to promote health, safety and welfare of its citizens.

The board finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the town 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 town.

The town board 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 board does not intend for this article to conflict with any existing anti-graffiti state laws.

Sec. 26-72. Definitions.

For the purposes of this article, the following words shall have the meanings respectively ascribed to them in this article, except where the context clearly indicates a different meaning:

Aerosol paint container means 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 means 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 means a tool, device, or substance that can be used to make permanent marks on any natural or manmade surface.

Graffiti means 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 town board.

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

Sec. 26–73. Prohibited acts.

(a) *Defacement.* It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any town-owned property or, without the permission of the owner or occupant, on any privately owned property.

(b) *Exception.* This article does not apply to temporary, easily removable chalk or other water soluble markings on public or private sidewalks, driveways or other paved surfaces which are used in connection with traditional children's activities, such as drawings, or bases for kick ball, 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.

(c) *Possession of graffiti implements.* It is 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 within the town, or within 50 feet of an overpass, bridge abutment, storm drain, street/highway signage, or similar types of infrastructure unless otherwise authorized by the town.

Sec. 26-74. Graffiti as nuisance.

(a) The existence of graffiti on public or private property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provision specified in this article.

(b) 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 shall keep the property clear of graffiti, at all times.

Sec. 26–75. Removal and abatement of graffiti.

(a) *Notice.* Whenever the town becomes aware of the existence of graffiti on any property, the town is authorized to remove the graffiti after giving, or causing to be given, written notice to remove or effectively obscure such graffiti to the property owner, such property owner's agent or manager, or any other person in possession or control of the property.

(b) *Removal by property owner.* The property owner shall remove graffiti as soon as possible, but no later than seven days from the date of receiving written notice from the town. The removal requirements of this article shall not apply in the following situations:

(1) *Hardship.* If the property owner or other responsible party in control of the property lacks the financial ability to remove the graffiti, and signs a consent for the town to remove the graffiti; or

(2) *Removal program.* If the property owner or responsible party in control of the property has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of ten days after service by first class mail of notice of the defacement.

(c) *Removal by town.* If the property owner fails to remove the graffiti, the town is authorized to enter upon private or public property for the purpose of graffiti removal or remediation. The town shall seek consent from the property owner before entering private property. Failure of the owner to remove the graffiti or to give consent for the town to remove the graffiti, shall result in the town removing the graffiti and summarily abating the nuisance, and shall subject the owner to a civil penalty of \$100.00, to be recovered by the town, if not paid within ten days of issuance of a citation, in a civil action in the

nature of debt.

Sec. 26-76. Appeals.

The property owner or party responsible for maintenance of the property who fails to remove graffiti or give consent to the town to remove graffiti and is assessed a civil penalty of \$100.00 under subsection 26-75(c) above, may appeal the assessment to the town administrator or his designee by giving written notice of appeal stating the reasons therefore within five days of assessment of the penalty. Within ten days of the decision of the town administrator or his designee, written notice of appeal may be sent to the Town of Vass Board of Commissioners for determination of whether the penalty shall stand or be overturned, but shall not otherwise be appealed.

Sec. 26-77. Enforcement.

(a) *Civil Penalty.* Any person who shall violate the provisions of this article shall be subject to a civil penalty for each separate offense. In the case of a violation by a minor, the parent or guardian shall be responsible for the penalty.

(b) *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 remediate 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.

(c) *Community service.* In lieu of, 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.

EFFECTIVE DATE. The provisions of this ordinance shall become effective immediately upon adoption in accordance with the laws of the State of North Carolina.

Adopted this 14th day of March, 2011.