

## CHAPTER 11.1

### GRAFFITI ABATEMENT

- Art. I. In General, §§11.1-1 through 11.1-4
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### ARTICLE I. IN GENERAL

#### SECTION 11.1-1. PURPOSE AND INTENT.

It is the purpose and intent of this chapter to provide a procedure for removal of graffiti from walls and structures on both public and privately owned property in order to reduce blight and deterioration within the City of Winchester and to protect the public safety, and to provide for the recovery of costs of such removal.

#### SECTION 11.1-2. DEFINITIONS.

The following terms, as used in this chapter, shall have the meanings set forth below:

*Zoning & Inspections Administrator* shall mean the Winchester Zoning & Inspections Administrator, or his designee.

*Graffiti* shall mean writings, drawings, inscriptions, figures or marks of paint, ink, chisel, chalk, dye and other similar substance, or flyers, bills and similar materials, which have been placed on public or private property without the permission of the owner, manager or occupant of the property.

*Placement of graffiti* shall include any form or act of drawing, painting, scrawling, writing, marking, inscribing, scratching, gluing, posting or otherwise affixing graffiti to public or private property.

*Public or private property* shall mean the exterior surface of any building, or any street, alley, sidewalk, or other vehicular or pedestrian right-of-way, or any article of

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**Editor's note: Ordinance No. 2008-28 adopted on June 10, 2008, enacted this chapter.**

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street furniture, utility or public service equipment, or other personal property located outdoors, whether owned by a public entity or by a private person or entity, and visible from any public right-of-way.

*Defacement* means the unauthorized application by any means of any writing, painting, drawing, etching, scratching, or marking of an inscription, word, mark, figure, or design of any type.

(Ord. No. 2011-21, 10-11-11)

### **SECTION 11.1-3. GRAFFITI DECLARED A NUISANCE.**

The existence of graffiti within the city limits of the City, as defined within this chapter, is declared by Common Council to be obnoxious and a public and private nuisance and must be quickly abated to avoid the detrimental impact of such graffiti on the City and its residents, business owners, and visitors, and to prevent the further spread of such graffiti.

(Ord. No. 2011-21, 10-11-11)

### **SECTION 11.1-4. GRAFFITI PROHIBITED.**

(a) The placement of graffiti on any public or private property is declared to be a public nuisance and is prohibited.

(b) The failure of any property owner, manager or occupant of public or private property to remove or effectively obscure graffiti which has been placed upon property under such person's ownership or control, within five (5) days after the service of notice as provided in this chapter for occupied buildings, and within fifteen (15) days for unoccupied buildings, is declared to be a public nuisance and is prohibited.

(c) Penalties for violations of this chapter are as set forth in Section 11.1-8 of this chapter.

(Ord. No. 2011-21, 10-11-11)

**State Law Reference:** Code of Virginia §15.2-908

## **ARTICLE II. ABATEMENT OF GRAFFITI NUISANCE**

### **SECTION 11.1-5. IDENTIFICATION OF GRAFFITI AND NOTICE TO ABATE.**

(a) *Notice and opportunity to abate.* Whenever the Zoning & Inspections Administrator becomes aware of the existence of graffiti on any public or private property, the Zoning

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& Inspections Administrator shall give, or cause to be given, written notice to remove or effectively obscure such graffiti to the owner of the property. Such notice may be served by personal service or certified mail, and shall be complete upon delivery or mailing. Such notice shall direct the recipient to remove or effectively obscure such graffiti within five (5) days of the date of the notice as provided in this chapter for occupied buildings, and within fifteen (15) days for unoccupied buildings, or to grant the city written permission to enter upon the property and remove or effectively obscure such graffiti, and shall inform the recipient that, in the event of failure to comply, the City may enter upon the property and remove or effectively obscure such graffiti, in the manner provided in this chapter.

(b) *Abatement by city.* If the owner of the property upon which graffiti has been placed fails to remove or effectively obscure the graffiti, or to grant the City written permission to enter upon the property and remove or effectively obscure such graffiti, within five (5) days from service of the notice as provided in this chapter for occupied buildings, and within fifteen (15) days for unoccupied buildings, described in subsection (a), the Zoning & Inspections Administrator may enter upon the property and remove or effectively obscure the graffiti.

(c) *Waiver of liability.* The failure of the recipient of a notice given pursuant to subsection (a) to comply with the notice by removing or effectively obscuring such graffiti within five (5) days as provided in this chapter for occupied buildings, and within fifteen (15) days for unoccupied buildings, shall be deemed a waiver of any claim by or on behalf of the notice recipient or, if different, the owner of the property, against the City for damage to the property arising out of the work or removing or obscuring the graffiti.

(Ord. No. 2011-21, 10-11-11)

**State Law Reference:** Code of Virginia §15.2-908

### **SECTION 11.1-6. MATERIALS.**

In no case shall the City be required to clean, paint or repair any more extensive area than where the graffiti is located. Nor shall the City be required to restore the area to its original condition (e.g., color, texture).

### **SECTION 11.1-7. INCENTIVE PAYMENT FOR ABATEMENT**

Where the property owner of the property where the graffiti is located complies with the notice to abate within five (5) days as provided in this chapter for occupied buildings, and within fifteen (15) days for unoccupied buildings; or, proactively removes or effectively obscures the graffiti prior to the issuance of a notice to abate, the property owner shall be entitled to an incentive payment not to exceed fifty dollars (\$50.00) payable by the City

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upon presentation of a copy of an official Winchester Police Department incident report, satisfactory proof of the cost of abatement and upon verification by the City of the cost expended for graffiti removal, as long as the graffiti was not caused by said owner.  
(Ord. No. 2011-21, 10-11-11)

### **ARTICLE III. PENALTIES**

#### **SECTION 11.1-8. PENALTIES.**

(a) Any person who commits a violation of Section 11.1-4(a) shall be punished as provided for in Section 16-11 of this code.

(b) Abatement of the nuisance by the City as provided in Section 11.1-5(b) shall be the sole remedy for the violation of Section 11.1-4(b); except that the expense of the abatement and the administrative fee shall constitute a lien on real property of the owner ranking in parity with liens for unpaid real estate taxes and shall be reported to the City Treasurer who shall record the lien and collect the lien in the same manner in which City taxes levied upon real estate are authorized to be collected.

(c) Abatement by the City shall be exclusive of and in addition to any criminal penalty that may be imposed.

### **ARTICLE IV. EXEMPTIONS**

#### **SECTION 11.1-9. EXEMPTIONS.**

This chapter shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings on streets, sidewalks or other paved surfaces which are used in connection with traditional children's activities, such as drawings or bases for kickball, hockey, hopscotch and the like, or to prohibit markings placed on public or private property by the authorized representative of the City or a public utility to indicate the location of service lines and facilities.