

**ORDINANCE 2023-08**

**AN ORDINANCE AMENDING CHAPTER 84 OF THE CODE OF THE BOROUGH OF WASHINGTON, ENTITLED VANDALISM, GRAFFITI AND OTHER PROPERTY OFFENSES**

**WHEREAS**, the Chapter 84 of the Code of the Borough of Washington prohibits vandalism and graffiti; and

**WHEREAS**, the Borough Clerk and Interim Manager and Borough Zoning Officer have recommended amending Chapter 84 to update penalties, require removal of graffiti, and include parents of minors as as potentially financially responsible parties.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of Washington, as follows:

**Section 1.** Chapter 84 of the Code of the Borough of Washington, entitled “Vandalism, Graffiti, and Other Property Offenses,” is hereby amended as follows (deletions noted in strikethrough ~~thus~~ and additions noted in bold italic *thus*):

§ 84-1 ~~Prohibited Acts.~~ *Purpose*

*The purpose of this chapter is to insure the health, safety and welfare of the community by providing a mechanism by which individuals may be prosecuted for defacing public and private property with graffiti or other markings, and by requiring the removal of any graffiti from any private or public property in a timely manner.*

**§ 84-1.1 Definitions.**

*As used in this chapter, the following terms shall have the meanings indicated:*

**DEFACE**

*To cover, mark, write on, paint, color or otherwise mar, disfigure or draw whatsoever on any private or public property of any nature, without the express written consent of the owner.*

**GRAFFITI**

*Any form of inscription, word, figure, marking or design that is marked, etched, scratched, draw nor painted on any building, structure, fixture, fence, gate, roadway, tree or other real or personal property either publicly or privately owned, without the written consent of the owner of the property.*

**INDELIBLE MARKER**

*Any felt-tip marker, china marker or similar device that is not water soluble and which has a flat or angled writing surface of 1/4 inch or greater*

**MINOR**

*Any person under the age of 18 years.*

**OWNER**

**The owner of record of the property as set forth in the records of the Tax Assessor for the Borough of Washington**

**PARENT**

**Any person to whom legal custody of a minor has been given by court order or is acting in the place of the parent or is responsible for the care and welfare of the minor and shall include:**

- A. Natural or adoptive parent;**
- B. Legal guardians;**
- C. A person who stands in loco parentis;**
- D. A person to whom legal custody has been given by court order.**

**REDEVELOPMENT PLAN**

**Any redevelopment plan as adopted by the Borough, together with any amendments adopted in accordance with Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.**

**§ 84-1.2 Prohibited Acts.**

No person shall damage, defoul, commit a nuisance on, or disturb public property or the property of another so as to create a hazardous condition. No person shall maliciously destroy, damage or injure any person or property, including and not limited to acts considered "vandalism," "graffiti," and/or any other malicious mischief.

**§ 84-2 Graffiti prohibited.**

**A. It shall be unlawful for any persons to apply graffiti to any building, structure, tree, shrub, curb, vehicle, or to other personal or real property (public or private) located within the Borough. *No person shall purposefully, willfully, or knowingly deface or vandalize any public or private property by painting, writing, drawing, or otherwise inscribing in any fashion thereon without the express written permission or consent of the owner.***

**B. *It shall be unlawful aid any one in defacing or applying graffiti to any real property (public or private) located within the Borough.***

**C. *It shall be unlawful for any person to possess a spray paint container or indelible marker on any public or private property, without the written consent of the owner of such property, with the intent to use the same to deface said public or private property.***

**BD. Nothing contained within this chapter shall prohibit the enforcement of any other chapter of the Municipal Code of the Borough of Washington.**

**§ 84-3 Exclusions.**

***The following shall not be prohibited under this Chapter and shall not be included in the definition of "graffiti" or deface" as used herein:***

**A. Easily removable markings (chalk or water-soluble) on public sidewalks and streets used in connection with traditional children's games, or Borough sponsored events, shall not be considered graffiti.**

**B. A mural painted with the consent of the owner and in compliance with applicable provisions of the Borough Code and / or Redevelopment Plan.**

**C. Window signage or window markings placed or made with the owner's consent for decorative or advertising purposes in compliance with applicable provisions of the Borough Code.**

**§ 84-4 Parental Responsibility and Liability.**

**A. No parent (as defined in Section 84-1.1 of the Borough Code) of a minor shall knowingly permit or by inefficient or lack of control to allow such minor in his or her control to place graffiti on or otherwise deface any private or public property as defined in Section 84-1.1 of the Borough Code.**

**B. Any minor found by a police officer or reported by a private citizen to be in violation of this chapter shall be brought to the nearest police station, where the minor shall be released to his or her parent. The parent, as defined in § 84-1.1, shall be immediately notified and required to report to police headquarters to procure the juvenile.**

**C. When a parent immediately called has come to take charge of the juvenile and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If a parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be released to the juvenile authorities except to the extent that, in accordance with police regulations promulgated by the Chief of Police, approved in advance for juvenile authorities, the juvenile may temporarily be entrusted to an adult, relative, neighbor or other person who will, on behalf of the parent, assume responsibility for caring for the juvenile pending availability of the parent or guardian.**

**D. In the case of a first violation by the juvenile, the juvenile and parent shall receive, both in person and by certified mail, a written warning notice from the Police Department indicating the circumstances under which the minor was found to be in violation of this chapter.**

**E. If the minor has been convicted of violating this chapter on a prior occasion within one year of the date of the present violation, there shall be a presumption that the parent having care of the minor knew or should have known of the minor's present violation of this section and shall be subject to the penalties set forth in this Chapter. Pursuant to N.J.S.A. 2A:53A-15, any parent, guardian, or other person having legal custody of a minor who fails or neglects to exercise reasonable supervision and control of the conduct of such minor shall be liable in a civil action for any destruction or damage caused by such minor offender under §84-1.2 and 84-2.**

**F. If the minor is found to be in violation of the curfew imposed by Chapter 34 of the Borough Code, the penalties imposed thereunder for parents or guardians of such minor shall apply.**

**{Reserved}**

**§ 84-5 Violations and penalties.**

Committing an act of graffiti is a violation of this chapter. Violations for committing an act of graffiti shall be charged on a per-property or per-structure basis (one offense for each violation). Violations do not reset over time. Upon conviction, each offense shall have the following penalties applied:

**A. Each person shall be subject to a fine of \$50 for the first offense, \$100 for the second offense, and \$150 for each subsequent offense. Adults who are not parents of offenders as defined in § 83-2 of**

~~this chapter.~~ **Adult Violators.** Any adult who violates any of the provisions of this chapter (excluding the parent of a minor who violates the provisions of this Chapter) shall, upon conviction thereof, be punished by one or more of the following penalties:

- (1) A fine of not less than \$500 and not exceeding \$1,000.
- (2) Imprisonment not to exceed 90 days.
- (3) A period of community service not to exceed 90 days.

**B. Minor Violators.** Any minor who violates any of the provisions of this chapter shall, upon conviction thereof, be punished by one or more of the following penalties:

(1) Violators of this chapter shall be required to perform community service of a period not to exceed 90 days and may be subject to a fine of not less than \$500 but no more than \$1,000.

(2) If a minor has been found to violate this chapter twice within a six-month period, the minor shall receive a summons and complaint from the police officer who apprehended the minor for the violation of this chapter.

(3) If a minor is found to be in violation of this chapter on three occasions within six months, then the juvenile as well as the parent having the care and custody of the minor shall receive a summons and complaint for the violation of this chapter.

(4) Any minor who violates any of the provisions of this chapter more than four times shall be reported by the Chief of Police to the juvenile authorities as a juvenile in need of supervision, and the Chief of Police, Borough Attorney or his or her designee may proceed to file such charges with the Superior Court of New Jersey Family Part as he or she may deem appropriate.

(5)

**BC. Restitution.** In addition to any fines imposed (or waived), the court shall order the offender to make restitution pursuant to this chapter. ~~C. Restitution.~~ Offenders shall 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.

**D. Community Service.** ~~If the court shall order the offender perform community service, it in lieu (or as part) of the penalties imposed by this section, it is strongly recommended that the court order community service. Community service shall be based on the following minimum requirements:~~

- (1) Offenders shall perform community service based on their level of conviction as follows:
  - (a) First offense: service sufficient to remove the graffiti and restore the property to its prior condition.
  - (b) Second offense: service sufficient to remove the graffiti and restore the property to its prior condition plus 10 additional days of community service.
  - (c) Third (and subsequent) offense: service sufficient to remove the graffiti and restore the property to its prior condition plus 20 additional days of community service.

(2) Reasonable effort shall be made to assign the offender to a type of community service that is reasonably expected to have the most rehabilitative effect of the offender.

(3) The order period of service shall be performed under the supervision of a community service provider approved by the Chief of Police.

§ 84-6 Enforcement.

The provisions of this chapter may be enforced by the Zoning Officer of the Borough of Washington or any police officer serving the Borough of Washington.

**§ 84-7 Removal of Graffiti.**

**A. Requirement to Remove.** *The occupant, lessee, agent and/or landlord of any commercial premises which has any form of graffiti on any building or structure shall be required to either restore the defaced surface by removing the graffiti or repaint the defaced surface within 10 business days after notice to the occupant, lessee, agent and/or landlord by the Chief of Police (or his designee) to remove the same. However, the State Department of Transportation shall be afforded 120 days from the date the written notice is mailed to remove the graffiti from property owned by the Department.*

**B. Penalties and Remedies.**

(1) *Any owner that fails to remove the graffiti within 20 calendar days of receiving written notice to remove such graffiti shall be subject to a penalty of \$20 per day, starting on the 21st calendar day after receiving notice. If after 30 calendar days (including the initial 20 calendar days), the graffiti is not removed, the penalty shall increase to \$50 per day, starting on the 31st day.*

(2) *The penalties set forth in this section shall be imposed against the owner of the property wherein such violation occurs. Failure of the property owner to pay the penalties imposed shall result in the charges being placed as a municipal lien upon the property as permitted by statute.*

(3) *If said graffiti is not removed within 30 business days after written notice is issued, the Borough shall send a second written notice via certified mail to the property owner to remove said graffiti and provide a detailed itemization of the costs for the Borough to remove the graffiti.*

(4) *If after 30 calendar days from receiving written notice to remove such graffiti and the itemized costs of removal, the property owner fails to remove the graffiti, then pursuant to the provisions of N.J.S.A.40:48-2.12f, or any successor statute, the Borough shall have the right to issue a summons and to enter the on to the property to remove the graffiti from the exterior of the building or structures on the property and/or repaint the exterior of such buildings or structures at the sole cost and expense of the owner. Nothing herein shall grant the Borough access to the interior of any building or structure located on the property. The property owner will thereafter be provided with a detailed itemization of the costs and expenses incurred by the Borough which shall be paid by the owner. Failure of the property owner to pay the cost and expense incurred by the Borough for the*

*removal of the graffiti within sixty (60) calendar days of receipt of such notice shall result in the charges being placed as a municipal lien upon the property as permitted by statute.*

*(5) The Borough retains the ability to assist the property owner when the public is substantially affected by repeated graffiti. Further, upon a showing that the property owner is a victim of a repeated violation of this Chapter, the Borough Council retains the ability to assist the property owner in removing the graffiti and waive the ability to place a lien on the premises.*

**§84-8 . Notification of order to remove graffiti.**

*The notice to remove graffiti shall contain a form to be utilized by the property owner to inform the Borough that the graffiti has been removed and shall contain a certification stating that, by affixing a signature to the form indicating that the graffiti has been removed, the owner is certifying that the facts set forth therein are true and that the certification shall be considered as if made under oath and subject to the same penalties as provided by law for perjury. The notice shall also detail the possible penalties imposed for noncompliance with the notice to remove graffiti.*

**Section 2.** All ordinances or parts of ordinances inconsistent herewith are repealed as to such inconsistencies.

**Section 3.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 4.** This Ordinance shall take effect upon final passage and publication according to law.

**Adopted: April 4, 2023**

**Laurie A. Courter**

**Borough Clerk**