

Date of 1st reading: 8/18/2011
Date of 2nd reading and Public Hearing: 9/15/2011

TOWN OF NEWPORT
DELAWARE

ORDINANCE # 2011-001

AN ORDINANCE TO ADDRESS ALL PHASES OF
THE INCREASING SPREAD OF GRAFFITI IN THE
TOWN OF NEWPORT

WHEREAS, the Mayor and Commissioners find that graffiti is a public nuisance and destructive to the rights and values of property owners as well as the entire community; and

WHEREAS, unless the Town acts to remove graffiti from public and private property, the graffiti tends to remain; and

WHEREAS, 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 and its citizens; and

WHEREAS, the Mayor and Commissioners desire to help prevent the ever increasing spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property.

NOW, THEREFORE, BE IT ENACTED AND HEREBY ORDAINED BY THE COMMISSIONERS OF NEWPORT THAT:

Section 1: Intent. The Mayor and Commissioners intend, 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 Commissioners do not intend for this Ordinance to conflict with any existing anti-graffiti state laws.

Section 2: Definitions. (1) **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. (2) **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 man-made surface. (3) **Minor** means any person under the age of 18.

Section 3: Prohibited Acts

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, or on any non-town-owned property, or upon private property when, in the opinion of the Code Enforcement Officer, where it is inconsistent with the character of the neighborhood, or is otherwise deemed a public nuisance by the Code Enforcement Officer.

It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or within one thousand (1,000) feet of those specific locations, or upon public property, or upon private property without the prior written consent of the owner or occupant of such private property.

The provisions of this Section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers. Additionally, a minor who is an employee of a person who or which is a vendor of a graffiti device may, in the course of their duties, possess such device for the lawful purpose of sale or transfer of the device while the minor is on the employer's place of business. The burden of proof in any prosecution for violation of this Section shall be upon the minor or student to establish the need to possess a broad-tipped marker or graffiti device.

It shall be 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 by the Town, or while in or within five hundred (500) feet of an underpass, bridge abutment, storm drain, or similar type of infrastructure, unless otherwise authorized by the Town.

Section 4: Accessibility to Graffiti Implements:

It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or permit to be exchanged, given, loaned, or otherwise furnished, any

aerosol paint container, broad-tipped marker, or paint stick to any person under the age of eighteen (18) years, without the written consent of the parents or guardian of the person.

Every person who owns, conducts, operates, or manages a retail commercial establishment selling aerosol paint containers, paint sticks, or broad-tipped markers shall store the containers, sticks or markers in an area continuously observable, through direct visual observation or surveillance equipment, by employees of the retail establishment, during the regular course of business.

In the event that a commercial retail establishment is unable to store the aerosol paint containers, paint sticks, or broad-tipped markers in an area as provided above, the establishment shall store the containers, sticks, and markers in an area not accessible to the public, in the regular course of business, without employee assistance.

Every person who operates a retail commercial establishment selling graffiti implements, shall place a sign in clear public view, at or near the display of such products stating: "Graffiti is against the law. Any person who defaces real or personal property, with paint or any other liquid or device, is guilty of a crime punishable by imprisonment of up to sixty (60) days and/or a fine of up to \$1,000.00."

Every person who operates a retail commercial establishment selling graffiti implements, shall place a sign in the direct view of such persons responsible for accepting customer payment for graffiti implements stating: "Selling spray paint, paint sticks, or broad-tipped markers to persons less than 18 years of age is against the law and punishable by a fine of at least \$250.00, and up to \$1,000.00."

Section 5: Penalties:

Any person violating this Ordinance shall be punished by a fine of not less than two hundred and fifty dollars (\$250.00) for the first offense; not less than five hundred dollars (\$500.00) for the second offense; and not less than one-thousand dollars (\$1,000.00) for each subsequent offense, or by imprisonment for a term not to exceed sixty (60) days, or by a combination of both fine and imprisonment at the discretion of the court.

In addition to any punishment specified in this Section, the court shall order any violator to make restitution to the victim or the Town for damages, loss or cost of abatement caused directly or indirectly by

the violator's offense in the amount or manner determined by the court.

In lieu of, or as part of, the penalties specified in this Section, a minor or adult may be required to perform community service as described by the court based on the following minimum requirements:

The minor or adult shall perform at least thirty (30) hours of community service.

At least one parent or guardian of the minor shall be in attendance at a minimum of fifty percent (50%) of the period of assigned community service.

The entire period of community service shall be performed under the supervision of a Community Service Provider approved by the Chief of Police. Reasonable efforts 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.

Section 6: Graffiti as Nuisance:

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

It is the duty of 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 to, at all times, keep the property clear of graffiti.

Section 7: Removal of Graffiti:

Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the Town or private owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of Police, or the Town Manager. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti, or pay for the removal, shall constitute an additional violation of this Ordinance.

If the perpetrator, according to the Section above, fails to remove graffiti, then, in accordance with the law, the graffiti shall be removed by the owner or the person or entity who has primary responsibility for control of property, or responsible for the repair or maintenance of property in the Town, within five (5) days after service of a notice of the defacement, either in person or by first class mail, to the owner or occupant of the premises.

The notice shall contain the following information:

The street address and legal description of the property sufficient for identification of the property;

A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;

A statement that the graffiti must be removed within five (5) days after personal receipt or the mailing date of the notice and that if the graffiti is not abated within that time, the Town will declare the property to be a public nuisance, subject to the abatement procedures in the Town Code and Delaware Law;

An information sheet identifying any graffiti removal assistance programs which may be available through the Town and or private graffiti removal contractors;

Whenever the Town Manager becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the Town Manager shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of a more extensive an area than that where the graffiti is located, unless the Town Manager, or their designee, determines, in writing, that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to the additional costs of repainting or repairing the more extensive area.

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 or responsible party and a release from the Town for liability from property damage or personal injury.

If the property owner or responsible party fails to remove the offending graffiti within the time specified by this Ordinance, or if the Town has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the Town and consistent with the terms of this Section, the Town shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

The Mayor shall appoint one of the Commissioners to serve as a Hearing Officer. The Hearing Officer shall provide Notice to the property owner of record and/or the party responsible for the maintenance of the property, (if a person different from the owner), not less than forty-eight (48) hours notice of the Town's intent to hold a due process hearing, at which the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance.

Notice shall be served by personal notice or telephone conversation with the owner or current occupant of the property. If the owner of record cannot be contacted after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of seven (7) days.

The determination by the Hearing Officer after the due process hearing shall be final. If, after the due process hearing, regardless of the attendance of the owner, responsible party or their respective agent, and the Hearing Officer determines that the property contains graffiti viewable from a public or quasi-public place, the Hearing Officer shall give written notice in an Abatement Order stating that unless the graffiti is removed within seventy two (72) hours, the Town shall enter upon the property, shall cause the removal, painting over (in such color as shall meet with the approval of the Hearing Officer), or such other abatement thereof as the Hearing Officer determines appropriate, and shall provide the owner or the responsible party thereafter with an accounting of the costs of the abatement effort on a full cost recovery basis.

Not sooner than the time specified in the Order of the Hearing, the Officer, the Town Manager, or the designee of the Town Manager, shall implement the Eradication Order, and shall provide an accounting to the owner or the responsible party of the costs thereof.

The Owner or responsible party may request a cost hearing before the Hearing Officer on the abatement accounting, and appropriate due process must be extended to the Owner or responsible party. If following the cost hearing or, if no hearing is requested, after the implementation of the Abatement Order, the Hearing Officer determines that all or a portion of the costs are appropriately chargeable to the abatement effort, the total amount set forth in the abatement accounting, or an amount thereof determined as appropriate by the Hearing Officer, shall be due and payable by the Owner or responsible party within thirty (30) days.

Any amount of abatement charges assessed by the Hearing Officer that are less than the total amount set forth in the abatement accounting shall be explained by written letter from the Hearing Officer to the Mayor and Commissioners.

Section 8: Lien:

As to such property where the responsible party is the property owner, if all or any portion of the assessed abatement charges remain unpaid after thirty (30) days, the portion thereof that remains unpaid shall constitute a lien on the property that is the subject of the abatement effort. The Town Manager shall authorize the Town Solicitor to proceed with any appropriate legal action(s) to accomplish the filing of a lien against the property.

Section 9: Anti Graffiti Design Consideration:

Whenever an applicant for design review approval, conditional use permit, special use permit, unclassified use permit, development agreement, or other form of development or building permit is received, and the proposed building(s) or structure(s) are visible from any public or quasi-public place, the Code Enforcement Office, as well as the Planning Commission, shall discuss with the applicant, the prevention of graffiti and encourage the applicant to use anti-graffiti techniques including, but not limited to, the following:

Use of a protective coating to provide for the effective and expeditious removal of graffiti;

Use of additional lighting;

Use of non-solid fencing;

Use of landscaping designed to cover large expansive walls such as ivy or similar clinging vegetation; or

Use of an architectural design to break up long, continuous walls or solid areas.

Section 10: Severability: It is hereby declared to be the policy of the Town of Newport that if any section, clause, or phrase of this declared invalid or unconstitutional by the judgment of any court of competent jurisdiction, such invalidity shall not affect the remaining sections, clauses or phrases of this Ordinance.

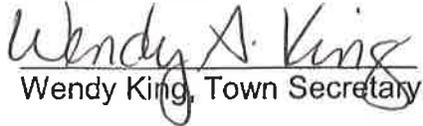
Section 11: Conflicts. Other ordinances or parts of other ordinances deemed to be in conflict with this Ordinance are hereby repealed and superseded to the extent that other such ordinances or parts of ordinances are in conflict, provided that such repeal shall not abate a right of action already accrued under any repealed ordinance.

Section 12: Effective Date. The Town Secretary shall certify to the adoption of this Ordinance and this Ordinance shall take full force and effect immediately after the date of final passage and approval.

The Commissioners of the Town of Newport hereby adopt this ordinance and its provisions to be held in full effect from this 15 day of SEPTEMBER, 2011.



Stephen D.M. Robinson, Esquire
Town Solicitor



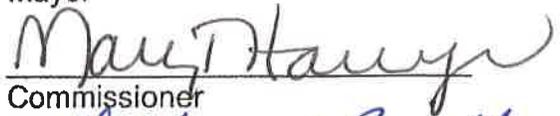
Wendy King, Town Secretary

First Reading:
8/18/2011

Second Reading:
9/15/2011



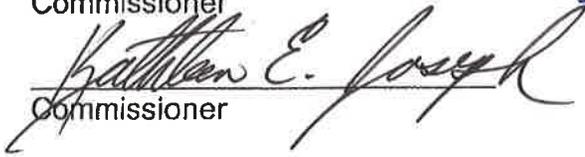
Michael D. Spencer
Mayor



Commissioner



Commissioner



Commissioner

Commissioner

SYNOPSIS
Ordinance

This Ordinance enhances the current code which merely addressed the sale and possession of spray paint containers and markers by adopting a code which addresses the possession and sale of graffiti devices, the abatement of the graffiti nuisance and the ability of the Town to recover its costs associated with graffiti abatement.

NOTE: This Ordinance was obtained via the Internet from the web site of the International Municipal Lawyers Association (IMLA). The material is copyrighted. If this Ordinance is acceptable, I will obtain permission to use its contents.