

Chapter 94A. Graffiti Abatement

Section

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§ 94A.01 PURPOSE

The purpose of this ordinance is to prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The Matthews Board of Commissioners finds that graffiti is a Public Nuisance and is destructive of the rights and value of property owners as well as of the entire community. It is believed that when graffiti is not removed, other properties become the target of graffiti, and entire areas are affected and become less desirable places in which to be, all to the detriment of the Town.

§ 94A.02 DEFINITIONS

The following definitions shall apply to this section:

Graffiti - any inscription, word, writing, drawing, figure, mark of paint, ink, chalk, dye or other similar substance, etching, engraving or other defacement (collectively “defacement”) by a graffiti implement or chalk or by the application of any material, gum label, paper, fabric or other matter (collectively “matter”) with adhesive or other substance which is intended to make the application of the matter permanent or difficult to remove, on public or private property. Graffiti does not include temporary, easily removable chalks or other water soluble markings which are used in connection with traditional children’s activities such as drawings of bases for ball games, hopscotch and similar activities, nor does it include temporary, easily removable markings used in connection with any lawful business or public purpose or activity and markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews.

Graffiti Implement - any aerosol paint container or paint applicator or brush, indelible marker containing ink or other pigmented liquid that is not water soluble, stick or label, paint stick, etching equipment or any other device capable of defacing or leaving a visible mark on public or private property.

Notice to Remove - a written notice provided by Town, either in person or by way of first class mail, to the person(s) responsible either for the graffiti or the property on which the graffiti is displayed.

Property Owner(s) - any person, group of people, governmental entity, or corporation having lawful control or possession of property to include such owner’s agent or manager, or any other person if known to the Town. The owner of the property shall be deemed to be those persons whose names appear on the tax records as having an interest in the property.

§ 94A.03 DEFACTMENT BY GRAFFITI PROHIBITED

It shall be unlawful for any person to write, paint, inscribe, scratch, scrawl, spray, place or draw graffiti of any type on any public or private building structure or any other real or personal property.

§ 94A.04 REMOVING GRAFFITI REQUIRED

(A) Notice to Remove. Upon determination that graffiti is present, the Town shall deliver to the perpetrator of the graffiti, if known, and/or to the property owner or person in possession, a *Notice to Remove*.

The *Notice to Remove* shall include:

- (1) The street address or other description of the property sufficient for property identification;
- (2) A description and general location of the graffiti;
- (3) A statement that the property is a public nuisance due to the existence of the graffiti;
- (4) A statement that the graffiti must be removed or effectively obscured within the time period specified within this ordinance and that if the nuisance is not so abated within that time the Town will abate the public nuisance at the cost of the property owner as set forth; and
- (5) Information concerning procedures for appeal of the notice.

(B) Removal by perpetrator. It shall be unlawful for any person placing graffiti on public or private property to fail to remove such graffiti or cause such graffiti to be removed within forty-eight (48) hours after a *Notice to Remove* is delivered by the Town. If graffiti is applied by a person under the age of eighteen (18) years of age, the parents or legal guardians of such minor shall be responsible for the removal of the graffiti within forty-eight (48) hours after notice from the Town. The removal by the person placing the graffiti shall only be completed with the permission of the property owner or person in possession.

(C) Removal by property owner. It shall be unlawful for any property owner to fail to remove or effectively obscure any graffiti upon property they own, manage, or are in lawful control or possession of within five (5) business days after receiving written notice (*Notice to Remove*) from the Town.

(D) Appeal. Any property owner who receives a *Notice to Remove* may appeal the notice within five (5) business days of receipt of notice to the Town Board of Commissioners in writing and shall state with specificity the reason (s) for the appeal. Thereafter, the Town Board will set a hearing on the appeal.

(E) Removal by Town. If the Town has delivered a *Notice to Remove* to the property owner or person in possession and that person fails or refuses to remove or effectively obscure graffiti upon their property as directed in the *Notice*, then, in addition to other enforcement actions hereunder, the Town is authorized to remove the graffiti and the cost to remove same shall be charged to the property owner or other person in possession. If the expenses of removing or obscuring the graffiti is not paid by the property owner or person in possession within thirty (30) days of receipt of a statement for the cost of such removal, the expense of the abatement actions by the Town shall become a lien upon the property and shall be collected as unpaid taxes.

(F) Emergency removal. If the Town determines that any graffiti is a danger to the health, safety or welfare of the public and is unable to provide notice by personal service after at least two attempts to do so, then forty-eight (48) hours after either mailing of the notice by first class mail or the posting of the notice in a conspicuous place on the property, the Town may remove or cause the graffiti to be removed or obscured at its expense.

§ 94A.05 ENFORCEMENT/REMEDIES

(A) Civil Penalties. The Town reserves the right to seek penalties and/or remedies through civil and/or criminal means as described below. The Town Manager shall designate staff person(s) who shall enforce this ordinance. Citations issued must be paid within seven (7) days from the issue date and time to the town. The Town is authorized to file civil suit to collect any unpaid citations.

(1) Violations of subsection §94A.03 (Graffiti): Violations of subsection §94A.03 shall subject the offender(s) to civil penalties in the amount as described in this section pursuant to the total number of adjudicated violations within the Town of Matthews by the offender.

(a) First offense: \$ 100

(b) Second offense \$ 250

(c) Third offense \$ 500

(d) Fourth offense \$ 750

(e) Fifth and any subsequent offenses \$1,000

(2) Violations of subsection §94A.04 (Removal): Violations of subsection §94A.04 shall subject the offender(s) to civil penalties as described below.

(a) Property Owner: Violations of subsection §94A.04 by the property owner or person in possession shall be subject to a civil penalty not to exceed \$100 per offense.

(b) Offender(s): Violations of subsection §94A.04 by the offenders creating the graffiti shall subject the offender or, if offender is a juvenile, the parent or guardian of the juvenile, to a civil penalty not to exceed \$250 per offense.

(B) Criminal penalty. In addition to, or in lieu of civil penalties or other remedies, violation of subsection §94A.03 of this section shall constitute a criminal infraction. Any person convicted of a violation of this section shall be fined not more than \$500 nor imprisoned more than thirty (30) days.

§ 94A.06 SEVERABILITY

The provisions of this section shall be deemed severable. If any portion of this section is deemed unconstitutional, it shall not affect the constitutionality of any other portion of this ordinance.

(Ord. No. 1800, passed 5-9-11)