

# TOWN COUNCIL



## STAFF REPORT Police Department

<b>MEETING DATE:</b>	March 10, 2015
<b>PROJECT:</b>	Ordinance Amending Chapter 18 General Offenses, Article V Offenses Against Property of the Town Code Adopting New Section 18-119 Graffiti – Second/Final Reading
<b>PROJECT MANAGER:</b>	Joey Reynolds, Chief of Police

**RECOMMENDATION:** Town Staff recommends that Town Council approve Second/Final Reading of an Ordinance amending Chapter 18 General Offenses, Article V Offenses Against Property of the Town Code Adopting New Section 18-119 Graffiti.

**UPDATE SINCE FIRST READING:** On February 10, 2015, Town Council approved First Reading of this Ordinance as presented by Town Staff. As a result no changes have been made to the Ordinance since First Reading approval.

**BACKGROUND:** As a result of recent Town Council direction and Town Staff's on-going review of the regulations and requirements governing the community, Town Staff presented several Ordinances for Town Council consideration at the January 20, 2015 Town Council workshop. Among other items, this included a new Ordinance regulating graffiti as an offense against property in the Town of Bluffton. In general, this draft Ordinance amendment included the following:

1. Held perpetrators of graffiti accountable for their actions.
2. Encouraged property owners to remove graffiti from their property.
3. Established a process in which the Town will assist property owners in the removal of graffiti from their property.
4. Authorized the Town to remove graffiti from private property at the Town's cost.
5. Provided for the creation of a reward program for persons offering tips that result in the conviction of a perpetrator of graffiti.

After review of the draft ordinance, Town Council directed Town Staff to remove the proposed graffiti removal assistance from the Neighborhood Assistance Program and rather make the program a part of the larger Community Development Program. The current Ordinance contains this change.

**TOWN COUNCIL ACTIONS:** Town Council has the authority to take the following actions with respect to this request:

1. Approve the Ordinance as submitted;
2. Approve the Ordinance with conditions; or
3. Deny the Ordinance as submitted.

**ANALYSIS:** The Town Code does not currently contain any provisions establishing graffiti as an offense holding perpetrators accountable or allowing for the Town to proactively remove graffiti from a property. Although graffiti is not currently a major issue in the community, the Police Department continues to see an increased amount of graffiti. This Ordinance will hold perpetrators accountable while supporting property owners that are victims of graffiti by putting in place mechanisms to assist with the removal of the graffiti by the Town of Bluffton

**ADOPTION PROCESS:** These amendments are being processed according to the following schedule:

1. Town Council Workshop – January 20, 2015;
2. Town Council First Reading – February 10, 2015; and
3. Town Council Second Reading – March 10, 2015.

**ATTACHMENTS:**

1. Ordinance No. 2015-\_\_\_\_\_
  - a. Exhibit A – New Section 18-119 Graffiti

ORDINANCE NO. 2015 - \_\_\_\_\_

TOWN OF BLUFFTON, SOUTH CAROLINA

AN ORDINANCE AMENDING CHAPTER 18 GENERAL OFFENSES, ARTICLE V OFFENSES AGAINST PROPERTY OF THE TOWN CODE ADOPTING NEW SECTION 18-119 GRAFFITI

WHEREAS, the Town of Bluffton desires to improve the general safety, welfare, health and properties of the citizens of the Town of Bluffton; and,

WHEREAS, to establish the necessary provisions to accomplish the above, the Town of Bluffton has authority to enact resolutions, ordinances, regulations, and procedures pursuant to South Carolina Code of Laws 1976, Section 5-7-30; and,

WHEREAS, the Code of Ordinances for the Town of Bluffton Chapter 18, Offenses and Miscellaneous Provisions, Article V, Offences Against Property does not currently include regulations pertaining to graffiti; and,

WHEREAS, the Town Council shall from time to time examine ordinances to ensure that they are properly regarded, enforced, sufficient and satisfactory to the needs of the community and can further suggest changes as deemed appropriate; and,

WHEREAS, the Town of Bluffton Town Council desires to establish a new Section 18-119 Graffiti to enable the Town of Bluffton to better facilitate, regulate, supervise, and provide consistent treatment throughout the Town.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, in accordance with the foregoing, the Town hereby amends the Code of Ordinances for the Town of Bluffton as follows:

SECTION 1. AMENDMENT. The Town of Bluffton hereby amends the Code of Ordinances for the Town Of Bluffton, South Carolina by adopting and incorporating a new Section 18-119 Graffiti to Chapter 18, Offenses and Miscellaneous Provisions, Article V, Offences Against Property as shown in Exhibit A, which is attached and incorporated hereto.

SECTION 2. REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. ORDINANCE IN FULL FORCE AND EFFECT. This entire Ordinance shall take full force and effect upon adoption.

DONE, RATIFIED AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

This Ordinance was read and passed at first reading on \_\_\_\_\_, 2015.

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Lisa Sulka, Mayor  
Town of Bluffton, South Carolina

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Sandra Lunceford  
Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at second reading held on \_\_\_\_\_, 2015.

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Lisa Sulka, Mayor  
Town of Bluffton, South Carolina

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Sandra Lunceford  
Clerk, Town of Bluffton, South Carolina

**ARTICLE V. – OFFENSES AGAINST PROPERTY****Sec. 18-119. Graffiti.**

- (a) Purpose and intent.
- (1) The Town Council 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.
  - (2) The Town Council 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 community's quality.
  - (3) The Town Council intends, through the adoption of this article, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement.
- (b) Definitions. For the purposes of this article, the following words shall have the meanings respectively ascribed to them, except where the context clearly indicates a different meaning:
- (1) Graffiti. Any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, glued or engraved on or otherwise affixed to any surface of public or private property by any means whatsoever 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 Manager.
  - (2) Person. Any individual, partnership, corporative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
  - (3) Town Manager. The Town Manager for the Town of Bluffton or designee.
- (c) Graffiti as nuisance. 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 provisions specified in this article. 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.
- (d) Prohibited acts. It shall be unlawful for any person to apply graffiti to any natural or man-made surface without the permission of the owner of the property.
- (e) Removal of graffiti by perpetrator. Any person applying graffiti on public or private property shall remove the graffiti within (10) days after written notice by the Town Manager. The notice shall be presumed when the written notice is either personally served upon the

perpetrator or mailed to the last known address of the perpetrator by certified post office mail with return receipt. If the perpetrator refuses to be served notice, the notice shall be presumed when the last known address of the perpetrator is conspicuously posted. Such removal shall be done in a manner prescribed by 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 article.

(f) Removal of graffiti by the Town. If graffiti is not removed by the perpetrator according to Section 18-119(e), graffiti may be removed pursuant to the following provisions:

(1) Although a property owner that is a victim of graffiti is encouraged to take immediate actions to remove the graffiti, a property owner may apply for the graffiti to be removed through the Town's Community Development Neighborhood Assistance Program. Such assistance, if available, may be provided regardless of income amount and shall only be provided if the following conditions are met:

A. The property owner must provide written consent to enter the property and release the Town from liability for property damage or personal injury.

B. The Town Manager shall not authorize or undertake to provide for the painting, removal, or repair of any more extensive an area than that where the graffiti is located, unless the Town Manager determines 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 pay for the costs of repainting or repairing the more extensive area.

(2) If the property owner does not elect to remove the offending graffiti or if the Town Manager has requested consent to remove or paint over the offending graffiti and the property owner has refused consent for entry on terms acceptable to the Town Attorney and consistent with the terms of this section, the Town Manager may take necessary actions to remove the graffiti at the cost of the Town.

(g) Ease of removal provisions.

(1) Any gas, electric, telephone, water, sewer, cable, telephone and other utility operating in the Town shall to the extent deemed feasible by the Town Manager to paint its above-surface metal fixtures with an industry-recognized paint type and color.

(2) All encroachment permits issued by the Town shall, among such other things, be conditioned on:

A. The permittee's application of an anti-graffiti material to the encroaching object of a type and nature that is acceptable to the Town Manager;

B. The permittee's immediate removal of any graffiti;

C. The Town's right to remove graffiti or to paint the encroaching object; or

D. The permittee's providing the Town with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object containing graffiti.

- (h) Prevention provisions. Any applicant for design review, conditional use permit, special use permit, development plan, or other form of development or building permit shall, to the extent deemed feasible by the Town Manager have designed any building structures visible from any public or quasi-public place in such a manner to consider prevention of graffiti, including but not limited to the following:
- (1) Use of a protective coating to provide for the effective and expeditious removal of graffiti;
  - (2) Use of additional lighting;
  - (3) Use of non-solid fencing; and
  - (4) Use of landscaping designed to cover large expansive walls such as ivy or similar clinging vegetation.
- (i) Rewards and reimbursements for information.
- (1) The Town Manager may offer a reward in an amount to be established by resolution of the Town Council for information leading to the identification and apprehension of any person who willfully damages or destroys any public or private property by the use of graffiti. In the event of multiple contributions of information, the reward amount shall be divided by the Town Manager in the manner it shall deem appropriate.
  - (2) Claims for rewards under this section shall be filed with the Town Manager in the manner specified by the resolution of Town Council.
  - (3) No claim for a reward shall be allowed unless the Town Manager investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.
- (j) Penalties.
- (1) In addition to the actions and/or fines established in Article XII Penalties of this chapter, any violation of this article may result in any or all of the following actions and/or fines:
    - A. The court shall order any violator to 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.
    - B. In lieu of, or as part of, the penalties, a minor or adult may be required to perform community service. 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.

**Secs. 18-~~119~~120 – 18-136. Reserved.**