

ARTICLE 742

ANTI-GRAFFITI

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742.01 PURPOSE

City Council has determined that graffiti is a nuisance because it contributes to blight, creates visual pollution and adversely affects the enjoyment and value of property. When graffiti is not promptly removed and remains on display, it invites additional graffiti, it can encourage criminal and gang activity and it can lead to other nuisance conditions. This Article is intended to deter graffiti by prohibiting it and by establishing penalties for applying it and failing to promptly remove it.

742.02 DEFINITIONS

"Graffiti" means an inscription, word, figure, mark, design, symbol, painting, writing, message, drawing, imprint or carving that is written, marked, etched, scratched, drawn, brushed, sprayed, glued, thrown, propelled or painted upon or otherwise applied to Property with a Graffiti Implement intentionally and without permission from the owner or the owner's authorized agent or manager when the defacement was committed or graffiti applied.

"Graffiti Implement" means an aerosol spray-paint container, broad tipped indelible marker, a marking device, a device used as a marking device, gum label, paint stick, graffiti stick, paintball marker or gun, etching equipment or any other device capable of scarring or leaving a mark on any natural or manmade surface.

"Graffiti Paraphernalia" means Graffiti Implement and also means files, folders, black books, sketch books, pictures (digital or printed), or papers with a common graffiti tag on them, computer files, computer images, rubber or latex type gloves and air filtration masks.

"Graffiti Removal" means the elimination of Graffiti by the owner of the affected property, by another person with the consent of the owner, by the owner's agent or by court order.

"Graffiti Tag" means a form of Graffiti represented by stylized signature of a writer's chosen name or the identifying mark of a group name or name of an association of individuals.

“Gum Label” means any material such as, but not limited to, decals, stickers, posters or labels which contain a substance commonly known as adhesive or glue, which cannot be removed from the surface in an intact condition and with minimal effort.

“Indelible Marker” means a permanent marker or similar implement with a point, a brush, an applicator or other writing implement which contains ink that is not water soluble.

“Intentional Defacement of Property” means to act willfully or maliciously, without permission from the owner or the owner’s authorized agent or manager, by using a Graffiti Implement to deface with Graffiti or to damage with Graffiti any publicly or privately owned Property.

“Paint Stick” or “Graffiti Stick” mean any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and, upon application, leaving a visible mark and that is not water soluble.

“Property” means publicly and privately-owned tangible property and real property including any improvements, structures, walls, fences, roofs, fixtures, plants, trees and landscaping, roads, sidewalks, pedestrian paths, playground equipment, and any other decorative or functional amenity or facility placed or stored thereon or attached thereto.

742.03 PROHIBITIONS

A. **Intentional Defacement of Property** is prohibited.

- (1) A person is guilty of Intentional Defacement of Property if the person acts willfully or maliciously, without permission from the owner or the owner’s authorized agent or manager, to deface with Graffiti or to damage with Graffiti any publicly or privately-owned Property by using a Graffiti Implement.

B. **Solicitation to Commit Intentional Defacement of Property** is prohibited.

- (1) A person is guilty of Solicitation to Commit Intentional Defacement of Property if the person solicits or commands another person to commit Intentional Defacement of Property.

C. **Aiding or Abetting Intentional Defacement of Property** is prohibited.

- (1) A person is guilty of Aiding or Abetting Intentional Defacement of Property if the person aids, abets or agrees to aid or abet another person in either planning to commit or to commit Intentional Defacement of Property (such as others in the group who knowingly make available the tools, writing materials, ladders, lookouts, materials or assistance, or who knowingly supply funds to acquire such materials for purposes prohibited under this Article).

D. **Possession of Graffiti Implements** is prohibited in the following situations:

- (1) by minors, defined herein to mean persons under eighteen (18) years of age, while on or within fifty feet (50’) of any school Property. Notwithstanding

this provision, any person may possess broad-tipped indelible markers and highlighters if traveling to or from a school where the person is a student, or if such person is permitted by school officials to possess same on the premises;

- (2) by any person remaining upon or immediately adjacent to Property without the permission of the owner, the owner's agent or manager after warning by a Police Officer that the person's presence on the Property with Graffiti Implements is unauthorized; "Immediately adjacent" means near enough to the Property to apply Graffiti;

742.04 PROOF OF VIOLATION

- A. When a person suspected of violating section 742.03.A(1) of this Article is found in possession of Graffiti Paraphernalia upon which a common or personal Graffiti Tag is written, painted, designed, photographed, copied or stored, and where that particular Graffiti Tag was found on the damaged or defaced Property, possession of such Graffiti Paraphernalia shall be prima facie evidence that the person in possession is the author of the Graffiti Tag which is the subject of the violation and was in possession of the Graffiti Paraphernalia when the violation was committed.

742.05 NOTICE TO ABATE GRAFFITI; OWNER'S DUTY TO ABATE

- A. Whenever a City of Bethlehem Building Code Inspector, Code Enforcement Officer, Police Officer or other agent designated by the Mayor (collectively hereafter referred to as an "official") determines that Graffiti exists on any Property the official may cause a notice to abate or remove the Graffiti to be issued to the Property owner. The Property owner shall have fifteen (15) days after the date of the notice to abate or remove the Graffiti. If the owner fails to comply, the Graffiti will be subject to remediation by the City.
- B. The notice issued pursuant to this section may be served in any one of the following manners:
 - (1) By personal service on the owner, the owner's agent or property manager; or
 - (2) By registered mail or certified mail with a copy also sent by regular US mail addressed to owners as their name(s) and address(es) appear on the current property tax assessment rolls or to the last known valid address(es) of the owners.
 - (3) If service is not successful under B.(1) above or if it is attempted under B.(2) above and fails by no receipt confirming delivery from the US mail, notice shall be posted on the Property. Such notice shall be posted in a place on the Property where it is reasonably likely to be seen by either an owner or a visitor.
- C. An official, at the official's sole discretion, may enter a written agreement with the owner to extend the compliance date in order to accommodate weather, hardship or other circumstances. An official, at the official's sole discretion, also may enter a

written agreement with the owner to allow the City to perform the remediation at the owner's expense on payment terms, to reimburse the City, acceptable to the City. Under such agreement, the City may engage all labor and acquire all materials from third parties, and from City supplied labor and materials, deemed by the City necessary to comply with the notice to abate or remove the Graffiti and to enter upon the premises with said resources to accomplish said purpose. The owner shall be liable for reimbursing the City's expense for same pursuant to the agreement. An official, at the official's sole discretion, may unilaterally revoke any agreement entered under this Article 742 if, in the official's judgment, the owner evidences an intention not to comply with an agreement.

742.06 STANDARDS FOR ABATEMENT AND REMOVAL OF GRAFFITI

Graffiti shall be abated, removed or completely covered in a permanent manner that renders it imperceptible against a proximate or surrounding surface which has not been defaced by Graffiti. When Graffiti is painted out, the color used to paint it out shall match the original color of the surface, or the surface shall be completely repainted with a new color that is aesthetically compatible with the pre-Graffiti colors and architecture. The removal shall not leave shadows and shall not follow the pattern of the Graffiti such that letters or similar shapes remain apparent on the surface after Graffiti markings have been removed. If the area is heavily covered with Graffiti the entire surface shall be repainted.

742.07 OWNER FAILURE TO COMPLY; REMEDIATION BY CITY; LIEN FOR EXPENSES AND PENALTY

Should an owner refuse, neglect or fail to comply with any of the terms, provisions and requirements of this Article after notice is given pursuant to the provisions hereof, then the City of Bethlehem Building Code Inspector, Code Enforcement Officer or other agent designated by the Mayor (collectively hereafter referred to as an "official"), acting in the name and on behalf of the City of Bethlehem, is authorized to engage all labor and acquire all materials deemed by the City necessary to comply with the notice to abate or remove the Graffiti and to enter upon the premises with said resources to accomplish said purpose. The cost and expense thereof, whether procured from third parties or from City supplied labor and materials, plus ten percent for the City's administrative expense, plus ten percent added as a penalty, shall be tallied. Said expenses and penalty shall be certified to the City Solicitor, who is authorized to enter the same as a lien against the property in the Court of Common Pleas of Northampton or Lehigh Counties and may proceed to collect same in like manner as other municipal claims are by law collectible.

742.99 PENALTY – FINES AND IMPRISONMENT

- A. Any person convicted of or pleading guilty to violating section 742.03 of this Article shall be subject to a fine of not less than two hundred dollars (\$200.00) and not more than one-thousand dollars (\$1,000.00) and up to ninety (90) days imprisonment.
- B. Any person convicted of or pleading guilty to violating section 742.03 of this Article for having defaced a "Historic Structure" as defined in City Zoning Ordinance, Section 1302.52, or a building within "Historic Bethlehem" as established by City Ordinance, Article 1713, shall be subject to a fine of not less than five hundred dollars

(\$500.00) and not more than one-thousand dollars (\$1,000.00) and up to ninety (90) days imprisonment.

- C. In addition to the fines assessable in this section 742.99, any person convicted of or pleading guilty to a violation of Sections 742.03 shall be subject to pay restitution for all costs to the City and property owner to remediate the Graffiti which is the subject of the violations established by a conviction or guilty plea.
- D. A person convicted of or pleading guilty to violating sections 742.03D shall forfeit ownership of any Graffiti Paraphernalia and Graffiti Implements said person possessed during the commission of the prohibited act. Forfeited property will then be disposed of as determined in the discretion of the Police Commissioner.
- E. Any person violating Section 742.07 of this ordinance shall be subject to a fine of not more than one-thousand dollars (\$1,000.00) per month for every calendar month and partial calendar month the violation continues after the time allowed under section 742.05 or any extension granted by the City official expires. Every such month and partial month that a violation continues is a separate violation and is subject to imposition of fines pursuant to this subsection (E) upon conviction of or a guilty plea to the violation.

(Article 742 established by Ord. 2016-22, Passed in City Council on August 2, 2016)