

ORDINANCE NO. 679

AN ORDINANCE OF THE TOWNSHIP OF CUMRU, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA, ESTABLISHING DEFINITIONS; PROHIBITING GRAFFITI AS A FORM OF VALDALISM; REQUIRING THE REMOVAL OF GRAFFITI; ESTABLISHING PENALTIES FOR THE VIOLATION OF THE TERMS OF THIS ORDINANCE; DECLARING THE VARIOUS PROVISIONS OF THIS ORDINANCE TO BE SEVERABLE; AND, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES THAT ARE INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE.

WHEREAS, the Board of Commissioners of the Township of Cumru, County of Berks, Commonwealth of Pennsylvania, have concluded that graffiti and other defacement of public and private property within the Township constitutes a public nuisance in fact; and,

WHEREAS, graffiti long has been associated with criminal gang activity; and,

WHEREAS, in recent years, there has been an increasing trend in the appearance of graffiti within Cumru Township and surrounding municipalities; and,

WHEREAS, the control and removal of graffiti is essential to implementing a proactive effort to prevent, not just graffiti, but other criminal activity as well; and,

WHEREAS, pursuant to §§ XXVI, § 1502, Article XV of the First Class Township Code, said Board have the corporate powers to prohibit any nuisances, on public or private grounds, that they have found to be prejudicial to the public health and safety, and to require the removal of the same.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, and it hereby is enacted and ordained by said Board of Commissioners of the Township of Cumru, as follows:

SECTION 1. DEFINITIONS

The following words and/or phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section 1, unless the context clearly indicates a different meaning:

AEROSOL PAINT CONTAINER – Any aerosol container that is adapted or made for the purpose of applying spray paint or made for the purpose of applying spray paint or other substances capable of defacing property.

BROAD-TIPPED MARKER – Any felt-tipped indelible marker, or similar implement, with a flat and/or angled writing surface that, at its broadest width, is greater than one-quarter ($\frac{1}{4}$) of an inch, containing ink or other pigmented liquid that is not water soluble.

ETCHING EQUIPMENT – Any tool, device or substance that can be used to make permanent marks on any natural or man-made surface.

GRAFFITI (Pl.); GRAFFITO (Sing.) – Any unauthorized inscription, word, figure or design that is indelibly marked, etched, scratched, drawn and/or painted on any public and/or private property, building, structure, facility and/or other place by any graffiti implement

GRAFFITI IMPLEMENT – An aerosol paint container, broad-tipped marker, gum label, paint stick, graffiti stick, etching equipment, brush or any device capable of scarring or leaving a visible mark on any natural or man-made surface.

GRAFFITI STICK; PAINT STICK – 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 leaving a mark at least one-eighth ($\frac{1}{8}$) of an inch in width.

PERSON – Natural persons, firms, partnerships, corporations, associations or other artificial bodies.

SECTION 2. PROHIBITED ACTS

A. No person shall write, draw, paint, print or place with ink, paint, chalk or other substance graffiti or other markings, whether obscene or not, and whether intended to offend or not, on the real or personal property of another, whether such property is publicly or privately owned, unless the owner of said property shall have, prior to the drawing, writing, printing or placing of such markings, specifically consented to the same; nor shall any person willfully or maliciously damage, deface or vandalize the property of another by inscribing or placing graffiti or any other markings on a public or private street, or on public or private property, whether real or personal; provided, however, that nothing contained herein shall prohibit the occasional and temporary marking of public streets and sidewalks with chalk for traditional children's games.

B. It shall be unlawful for any person to possess a spray paint container, liquid paint in cans, a broad-tipped marker or any other pigmented substance in an aerosol or similar spray container in any public building or upon any public facility or private property with the intent to use the same to deface said building, facility or property. A person who possesses a spray paint container, liquid paint in cans, a broad-tipped marker or any other pigmented substance in an aerosol or similar spray container in any public building, or upon any public facility or private property, with no legitimate or lawful purpose therefore, shall be presumed to have possessed the same with the intention of using such container, marker, can or paint to deface said building, facility or property, the presumption capable of being rebutted by the possessor by demonstrating a lawful, legitimate use for the container, marker, can or paint.

C. It shall be unlawful for any parent, legal guardian or other person having custody, or in the presence of, any minor child under the age of 18 years, to assist, aid, abet, allow, permit or encourage said minor to violate the provisions of this Ordinance, either by words, overt act or by failing to act, or by lack of supervision and control over said minor child.

SECTION 3. REMOVAL OF GRAFFITI

A. Removal by Perpetrator – Any person who shall have been found to have applied graffiti on public or private property shall have the duty to remove said graffiti within twenty-four (24) hours after notice to do so by the Township of Cumru and/or by the owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of the Police Department of Cumru Township, or by his/her designee. Any person who shall have so applied graffiti shall be responsible for the removal or for payment of the costs incurred to remove said graffiti. The failure of the responsible person to remove such graffiti or to pay for the costs of its removal shall be deemed to constitute an additional violation of this Ordinance. Where the perpetrator is an un-emancipated minor, the parents, legal guardian or other person having custody of said minor, also shall be responsible for the removal of the graffiti, or for the payment of costs incurred to effect such removal.

B. Removal by Owner of Property – In the event the perpetrator responsible for the application of graffiti cannot be located, or should said perpetrator fail to remove such graffiti as directed, it shall fall to the owner of the premises, or to that person who has primary responsibility for the control, repair and maintenance of the property, to remove all graffiti from their real and/or personal property within twenty-one (21) calendar days of their receipt of a notice from the Township to do so. Said notice to contain the following information:

1. The street address, and other information, as may be necessary, to identify sufficiently the property at issue.

2. A statement that the property is a potential graffiti nuisance property.
3. A statement that the graffiti must be removed within twenty-one (21) calendar days of the receipt of the notice.
4. An information sheet identifying any graffiti removal assistance programs that may be available through the Township.

C. Removal by Township – Whenever the perpetrator of the application of graffiti cannot be located, or whenever such a perpetrator fails to remove graffiti as required by the terms of this Ordinance; or, when the owner, or the person with primary responsibility for a premises cannot or will not remove graffiti, as directed by the Township in accordance with the terms of this Ordinance, then and in that instance, the Township hereby is authorized to enter, through its own forces, or by contractor, onto the subject premises and to expend public funds for the limited purposes of removing the graffiti and/or restoring the specific area of the premises that has been defaced. In no instance shall the Township undertake to repair and restore an area more extensive than the area that has been impaired by the graffiti. All reasonable efforts to minimize damage from entry shall be taken by the Township and/or its contractors, and all reasonable efforts will be made to cause the repainted, repaired area to blend with other areas of the façade of the building, structure or facility upon which the graffiti existed.

D. Township Costs Enforceable-Debt-Lien – Any and all costs incurred by the Township in the abatement and removal of the graffiti nuisance, as provided for in this Ordinance, shall constitute a debt owed to the Township by the property owner or person with primary responsibility and control of a premises, and said debt shall be enforceable as a lien against the property upon which the nuisance existed, in addition to any and all other legal remedies available for enforcement of debts owed.

SECTION 4. PENALTY FOR VIOLATION

Any person who shall violate any of the provisions of this Ordinance, or any resolutions or regulations made in pursuance hereof, shall, upon conviction thereof by a District magistrate, be subject to a fine of not more than One Thousand Dollars (\$1,000.00), or such lesser amount as is the maximum penalty prescribed by law, together with the costs of prosecution, for any single violation

Every violator of the provisions hereof shall be deemed guilty of a separate offense for each and every day that such violation shall continue and (s)he shall be subject to the penalties imposed herein for each and every separate offense.

SECTION 5. EFFECTIVE DATE

This Ordinance shall become effective at the earliest date permitted under law.

SECTION 6. SEVERABILITY

Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid, for any reason, such unconstitutionality or invalidity shall not affect the other provisions or applications of this Ordinance that can be given effect without the unconstitutional or invalid provisions or applications; and, to this end, the provisions and applications of this Ordinance are declared to be severable.

SECTION 7. REPEALER

All ordinances, or parts of ordinances, inconsistent with the provisions of this Ordinance be, and the same hereby are, repealed.

ENACTED AND ORDAINED by the Board of Commissioners of the Township of Cumru, this 8th day of Sept., 2008.

TOWNSHIP OF CUMRU
BERKS COUNTY, PENNSYLVANIA

By: _____
President

ATTEST:

Secretary