

Sponsor: _____
First Reading: _____
Second Reading: _____
Third Reading: _____

ORDINANCE #__-26

AN ORDINANCE TO AMEND CHAPTER 18 (BUILDING AND BUILDING REGULATIONS), ARTICLE X (PROPERTY MAINTENANCE CODE) TO ESTABLISH REGULATIONS REQUIRING GRAFFITI REMEDIATION BY PROPERTY OWNERS

WHEREAS, Section 4.2.25 of the Smyrna Town Charter authorizes the Town Council to “provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants”;

WHEREAS, graffiti is destructive to the Town of Smyrna and negatively impacts property values and the aesthetic appearance of the Town;

WHEREAS, graffiti has been found to be related to other illegal activity, such as littering, theft, and property destruction; and

WHEREAS, in order to preserve and protect the Town of Smyrna, in the opinion of the Town Council, it is necessary for the public health, safety, and welfare to establish regulations requiring private property owners to remediate graffiti on private property.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Amend Chapter 18 (Buildings and Building Regulations), Article X (Property Maintenance Code), Section 18-302 (Additions, insertions, deletions and changes) by adding a new subsection (d) as follows:

Chapter 3, GENERAL REQUIREMENTS, is amended as follows:

* * *

d. Section 302.9 Defacement of Property is hereby deleted in its entirety and the following is substituted in lieu thereof as a new Section 302.9, to read as follows:

302.9 Defacement of property.

302.9.1 Definitions. The following words, terms, and phrases, when used in this section shall have the meanings ascribed to them in this subsection except where the context clearly indicates a different meaning:

- (a) Graffiti – any unauthorized inscription, word, figure, painting, or other marking that is written, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement and which marking was not authorized in advance by the owners of the property.
- (b) Town Manager – the Town Manager of the Town of Smyrna or his or her designee.

302.9.2 Property Owner Responsibility. It shall be the responsibility of the owner of any property damaged by graffiti to remove the spray paint or other substance or markings used to create the graffiti and restore the surface to a condition similar to or better than what existed prior to the graffiti.

302.9.3 Notice; Appeal.

- (a) Notice to remove graffiti shall be issued pursuant to Section 107. The notice to remove graffiti shall specify that it is unlawful for the owner or anyone who has primary responsibility for control of the property, or for maintenance or repair of the property, to permit property that is defaced with graffiti to remain defaced beyond a period of 14 days after service of notice as specified in this chapter.
- (b) Any person receiving a notice to remove graffiti may appeal the notice to the Town Council by filing a written notice of appeal within 5 business days of receiving the notice. Any appeal of a violation shall be heard by the Town Council as soon as reasonably possible. The filing of an appeal shall stay any enforcement action by the Town. The Town Council shall hear evidence at the hearing from all interested parties to determine whether a preponderance of the evidence exists that graffiti must be removed from the property in question pursuant to the terms of this Section 302.9.
- (c) The owner may develop with the Town of Smyrna Department of Building and Inspections an appropriate and specific plan for the removal of the graffiti, and if the owner submits a written preliminary plan and contacts the Department within the 14-day period, the violation will be held in abeyance pending review and approval of such plan and the removal of the graffiti pursuant to such plan. Failure to remove the graffiti in accordance with the time frame outlined in the removal plan will result in a violation of these regulations and the imposition of civil penalties as outlined herein.

302.9.4 Exceptions to Property Owner Responsibility. The removal requirements specified herein shall not apply if the property owner, or responsible party, can demonstrate that he or she has an active program for the removal of graffiti and such removal has been scheduled as part of such program, in which case it shall be unlawful to permit such property to remain defaced with graffiti beyond a period of 20 days after service of notice as specified in this chapter.

302.9.5 Graffiti Removal Funding Assistance. Following the removal of graffiti, a property owner may apply to the Town for the reimbursement of some, or all, of the cost of graffiti removal from the graffiti removal fund, if such a fund is established by the Town Manager pursuant to 302.9.8(b). Distribution of funding allocations to private property owners shall be based solely on funds available and on a first come, first served basis at the discretion of the Town Manager. Receipts for the work required to remove the graffiti shall be submitted to the Town Manager for graffiti removal reimbursement. Requests for town funding assistance shall be submitted to the Town Manager in writing, with all receipts and appropriate documentation, within 30 days of the completion of the removal. Such removal shall be certified by the Town Manager to have been completed prior to such reimbursement.

302.9.6 Failure to Remove. A property owner who fails to remove the graffiti as specified herein shall be subject to the civil penalties set forth herein.

302.9.7 Town Removal. In the event graffiti is not removed or otherwise eliminated or abated by the date specified in the notice, the Town, or a contractor hired by the Town, shall enter upon the parcel and remove or abate such graffiti. If the Town has conducted the removal or abatement of graffiti in accordance with this subsection, the actual cost of the removal or abatement, plus twenty (20%) percent in Town overhead, shall be charged to the owner, or his or her agent, and such charge shall be due and payable by the owner within sixty (60) days of such bill. At the expiration of the sixty (60) days, interest shall accrue on all unpaid amounts at the rate of 1.5% per month.

302.9.8 Civil Penalties.

- (a) The civil penalty for a first offense of this Section 302.9 shall be a mandatory penalty of not less than \$200.00 or more than \$500.00. For the second and any subsequent offenses, the penalty shall be \$500.00. All penalties shall be due within sixty (60) days of the date of the penalty.
- (b) The civil penalties collected hereunder may, at the discretion of the Town Manager, be used to establish a fund to pay for the cost of public and private property graffiti removal. Distributions of revenue collected from civil penalties for private property graffiti removal, if available, shall be administered by the Town Manager.
- (c) Any civil penalties imposed for violations of this Section 302.9 on private property and/or any remediation expenses incurred by the Town may be added to the property tax bill of the private property owner pursuant to 25 Del. C. § 2901 once the time for payment of the civil penalties, remediation costs, and/or abatement costs has expired.

Section 2. Effective Date. This Ordinance shall become effective immediately upon its adoption by the Town Council.

Section 3. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that the Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the Town Council's intent.

SYNOPSIS

This ordinance requires property owners to remove graffiti within 14 days of receiving a notice of removal. Failure to remove the graffiti may result in civil penalties being imposed. If graffiti is not removed, the Town may cause the graffiti to be removed by the Town and require the property owner to pay the remediation costs. Any unpaid civil penalties or remediation costs may be added to the tax bill for the property at issue.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on _____, 2026.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in the "Smyrna/Clayton Sun Times" on _____, 2026 and posted at the Town Hall on _____, 2026.

So Certifies:

Town Clerk