

INTRODUCED BY Corcoran  
SECONDED BY T. Calabrese

INTRODUCTION July 12, 2011  
HEARING August 9, 2011  
ADOPTION August 9, 2011

**BOROUGH OF CLIFFSIDE PARK  
COUNTY OF BERGEN, STATE OF NEW JERSEY**

**ORDINANCE 2011-15**

**ORDINANCE AMENDING ORDINANCE 3-20  
"GRAFFITI SALE OF SPRAY PAINT CONTAINERS  
AND INDELIBLE MARKERS" OF THE REVISED  
GENERAL ORDINANCE  
OF THE BOROUGH OF CLIFFSIDE PARK**

The Council does hereby rescind in its entirety Section 3-20 of the revised general ordinance of the Borough of Cliffside Park entitled "Graffiti Sale of Spray Paint Containers and Indelible Markers".

The Council does hereby ordain the following ordinance entitled:

**3-20 GRAFFITI ORDINANCE**

**3-20.1 Findings and declaration of policy**

The Mayor and Council of the Borough of Cliffside Park find and declare that the effacing of public and private property by what is commonly referred to as "graffiti" contributes to the degradation and blight of neighborhoods and that graffiti constitutes a nuisance which endangers the public health, safety and welfare. Left uncontrolled, graffiti encourages additional graffiti and results in blighting conditions and a reduction in property values. The Mayor and Council further find and declare that the prompt removal of graffiti is the responsibility of all property owners and that, in the event a property owner should fail or refuse to remove graffiti, it is appropriate for the Borough of Cliffside Park to abate such a nuisance and to recoup its expenses by liening the real property if the property owner refuses to comply with this ordinance.

**3-20.2 Definitions**

As used in this chapter, the following terms shall have the meaning indicated:

**3-20.2 (1) Graffiti**

Any writing, drawing, marking, symbol or the like placed upon any real or personal property, whether private property or public property, by using paint, spray paint, aerosol paint, markers, chalk, dyes or any other substance or method without the consent or authorization of the owner of the property. "Graffiti" shall not mean any words, letters, and symbols, logos or numbers which are in compliance with the Borough's sign ordinance, or the occasional and temporary marking of public streets or sidewalks with chalk for traditional children's games.

**3-20.2 (2) Minor**

Any person under the age of 18 years.

**3-20.2 (3) Wide Felt-Tip Markers**

A marking pen or instrument of which the surface used for writing or marking purposes is equal to or greater than 1/8 of an inch.

**3-20.3 Prohibited conduct**

**3-20.3 (1)** 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 the drawing, writing, printing or placing of such markings, specifically consented to the same and has obtained a sign permit from the Borough; 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 temporary marking of public streets or sidewalks with chalk for traditional children's games.

**3-20.3 (2)** No person shall knowingly sell or offer for sale to the general public or transfer any spray paint or other pigmented substance in aerosol or similar spray container, or any wide felt-tip marker, as defined above, unless:

- A) A sign is exhibited, either where the product is displayed or where it is paid for, warning that in the Borough of Cliffside Park a conviction for the first offense any act of graffiti carries a minimum mandatory fine of \$250.00 for the first offense and a minimum mandatory twenty-day period of incarceration or community service.
- B) No minor shall knowingly present or furnish false or fraudulent evidence of their age to secure the purchase or transfer of any spray paint container or indelible marker.
- C) It shall be unlawful for any person to possess a spray paint container, liquid paint in cans, a wide felt-tip 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.
- D) A person who possesses a spray paint container, liquid paint in cans, a wide felt-tip 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 said presumption being rebuttable by the possessor demonstrating a lawful, legitimate use for the container, marker, can or paint.
- E) It shall be unlawful and deemed a violation of this ordinance 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 section, as defined herein, either by words, overt act or by failing to act or by lack of supervision and control over said minor child.

### **3-20.4 Removal of Graffiti**

**3-20.4(1)** Owners of real property within the Borough of Cliffside Park shall be required to remove graffiti from all building(s) and structure(s) upon their property within 7 calendar days following discovery thereof or within 7 calendar days of receipt of a notice from the Building Department or any other agency of the Borough of Cliffside Park served upon the owner, property manager or occupant of said premises, whichever event shall first occur.

**3-20.4(2)** If the property owner fails or refuses to remove the graffiti within the seven (7) calendar day period, the Borough of Cliffside Park Administrator shall direct his designee in conjunction with a uniformed police officer to enter upon said property and remove the graffiti.

**3-20.4(3)** The Borough and its agents shall be afforded legal protection per N.J.S.A. 59:1 et seq. ("Title 59") if the real property is damaged in the clean up process.

**3-20.4(4)** The cost of abating the nuisance, removing such graffiti shall be the responsibility of the property owner.

**3-20.4(5)** The costs assessed against the property owner for the graffiti removal process shall be the actual cost of labor and materials plus twenty-five (25%) percent administrative and overhead costs.

**3-20.4(6)** The property owner shall be given written itemized expense documentation and directed to reimburse the Borough within 15 days of receipt. If the property owner fails to comply with this subsection of this ordinance, the Borough Attorney, upon receipt of an affidavit or certification of the respective department heads, may direct and authorize the Tax Collector to lien the premises.

### **3-20.5 Violations and Penalties**

**3-20.5(1)** Any person found guilty of violating any of the provisions of this chapter shall be subject to the following penalties:

A) First Offense: Minimum mandatory fine of \$250.00, but not greater than \$2,000.00.

B) Second Offense: Minimum mandatory fine of \$500.00, but not greater than \$3,000.00.

C) Third and Subsequent Offenses: Minimum mandatory fine of \$1,000.00, but not greater than \$5,000.00.

D) All offenses carry the presumption of incarceration not to exceed twenty (20) days per offense, excepting the first offense inclusive of multiple Summons issued in conjunction with the first offense, wherein the Magistrate, subject to his discretion, shall order not less than twenty (20) days but not more than one hundred twenty (120) days of community service.

E) Each act of graffiti shall be deemed a separate offense for the purposes of this ordinance.

F) In addition to any other penalty imposed by the Court, any person convicted of a violation of this chapter may, at the discretion of the Magistrate, be required to pay to the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti or, as part of such person's community service, to remove the graffiti from the property.

### **3-20.6 Juvenile Offenders**

**3-20.6(1)** All juvenile offenders shall be subject to the Attorney General's directive no. 2005-4 entitled:

"Attorney General Guidelines for station house adjustment of juvenile delinquency offenses"

**3-20.6(2)** Satisfaction of all monetary fines shall be the responsibility of the parent or guardian of the convicted juvenile.

NON-REPEALER. All other Sections of the revised Borough ordinance not specifically amended by the provisions of this Ordinance shall remain in full force and effect.

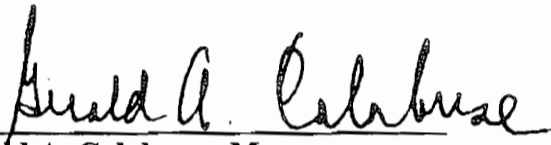
SEVERABILITY. If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this ordinance shall be judged invalid in whole or in part or as applied to any particular circumstance or individual by a court of competent jurisdiction, such order of judgment shall not effect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this ordinance.

REPEALER. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistencies only.

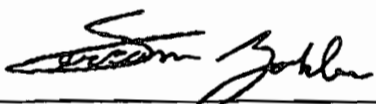
EFFECTIVE DATE. This ordinance shall take effect immediately upon final passage and publication as required by law.

INTRODUCED July 12, 2011

ADOPTED August 9, 2011

  
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Gerald A. Calabrese, Mayor

ATTEST:

  
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Sercan Zoklu, Borough Clerk