

**BOROUGH OF RED BANK
COUNTY OF MONMOUTH
STATE OF NEW JERSEY**

ORDINANCE NO. NP2023-10

**ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH,
STATE OF NEW JERSEY AMENDING CHAPTER 382, "GRAFFITI" TO UPDATE
AND ENHANCE THE BOROUGH'S REGULATIONS PERTAINING TO GRAFFITI**

WHEREAS, the Borough of Red Bank (the "Borough"), as a regional center of culture and commerce, as well as a significant mass transit hub, regularly attracts a substantial number of visitors and transient guests to various areas within its limits; and

WHEREAS, the Borough often experiences instances of nuisance vandalism, such as the posting of bills, stickers, graffiti, and other etchings or markings of public and private property; and

WHEREAS, the Borough finds it necessary to provide its Police and Code Enforcement Officers with updated and better-defined regulations to address this issue;

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Red Bank that Chapter 382: "Graffiti" of the Revised General Ordinances of the Borough is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

CHAPTER 382: "GRAFFITI"

§ 382-1 Prohibited Act.

No person shall commit an act of graffiti on public, quasi-public or private property. A person commits an act of graffiti if the person, having no right to do so, intentionally applies graffiti or, in the case of commercial graffiti, causes graffiti to be applied to property.

§ 382-2 Definitions.

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

GRAFFITI

Any inscriptions, words, figures, stickers, or designs that are drawn, etched, marked, painted, pasted, scratched, stapled or otherwise affixed on any real or personal property without the express knowledge and consent of the owner of said property, or which contribute to the ugliness and unsightliness of its object, space, area or community and which are detrimental to the attractiveness, neatness, and good order of the Borough. This includes commercial graffiti, commonly involving the posting of bills or stickers, which means any advertisement or notice of a commercial nature. This definition includes all writings or other written or pictorial matter which is commonly understood and accepted by a reasonable person as "graffiti" and is not intended to infringe upon any protected artistic expression.

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§ 382-3 ~~Act of graffiti.~~Defacement of property.

~~A person commits an act of graffiti if the person, having no right to do so, intentionally applies graffiti or, in the case of commercial graffiti, causes graffiti to be applied to property.~~

- A. The writing or placing of any graffiti on any public or private real or personal property, or a mixture of both, without the express knowledge and consent of the owner is prohibited.
- B. The marking or defacing of any property, real, personal or mixed, by an owner thereof in such a manner as to constitute graffiti is likewise prohibited.
- C. It shall be unlawful for any person who applied graffiti not to remove it within seventy-two (72) hours of receipt of notice or fourteen (14) days of its application, whichever is later.
- D. To the extent permitted by law, parents shall be responsible for the costs of removal when the graffiti has been applied by their minor child.
- E. All persons directly or indirectly involved shall be as equally responsible as the individual who actually defaces the object or area. Any individuals who encourage and participate in such activity, as well as individuals who make available the tools, writing materials, ladders, lookouts, material, or assistance or who knowingly supply funds to acquire materials for such purposes, shall be likewise subject to punishment under this chapter.

§ 382-4 Violations and penalties.

- A. Any person who is convicted of the provisions herein shall be subject to imprisonment not to exceed 90 days and to a fine not less than \$250 but not to exceed \$1,000. In addition to any other penalty imposed by the court, any person who is convicted of the provisions herein may be required to pay the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti or the amount necessary for the removal of same and to perform community service, which shall include removing the graffiti from the property, if appropriate. If community service is ordered, it shall be for either not less than 20 days or for not less than the number of days necessary to remove the graffiti from the property. As a condition of sentencing, the court shall have the authority to order that the offender be responsible for cleaning, repairing, painting or otherwise restoring the damaged property to the condition it was in prior to being damaged, provided that a determination is made that any restoration efforts made by the offender shall not subject the offender to unreasonable risk of death or

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serious physical injury or otherwise be in violation of law. In the event that the offender is unable for any reason to comply with the above, the Court shall have the authority to order that said offender make full monetary restitution to restore the property to its original undamaged condition. The court shall have the full discretion to set the terms of the restitution.

- B. In addition to the community service and any other penalty imposed by the court, any person who violates the provisions of this chapter shall, upon conviction thereof, be subject to a mandatory fine of not less than \$50 to be paid to the Graffiti Trust Account.

§ 382-5 Fund.

A Graffiti Trust Account maintained by the Borough specifically for the remediation of graffiti and the commissioning of public murals and art on public property within the Borough is hereby created. The governing body shall control the allocation of the funds in the Graffiti Trust Account for the remediation of graffiti within the Borough, which shall include cleaning, repairing, painting or otherwise restoring the damaged public property to the condition it was in prior to any remediation, and the commissioning of public murals and art to discourage future graffiti. Any remediation of public property subjected to graffiti may be funded by the Graffiti Trust Account at the discretion of the governing body.

§ 382-6 Graffiti on private property.

- A. Any private property that has been subjected to graffiti shall not be eligible for the Graffiti Trust Account. Such private property owner must remediate his/her property within a reasonable time.
- B. In accordance with N.J.S.A. 40:48-2.59(c), the owner of record of any private property subjected to graffiti shall be entitled to written notice of an order to remove graffiti, which shall be delivered to the owner by certified and regular mail. The order shall afford the owner the opportunity to remove the graffiti within 90 days from the date that the notice is sent; however, the Department of Transportation shall be afforded 120 days from the date a notice is sent to remove graffiti from property owned by the Department.
- C. The notice to remove graffiti shall contain a form to be utilized by a property owner to inform the Borough that the graffiti has been removed. The form shall contain a provision stating that by affixing a signature to the form, indicating that graffiti has been removed, the owner is certifying that the facts set forth therein are true and that the certification shall be considered as if made under oath and subject to the same penalties as provided by law for perjury.

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- D. An owner who has been ordered to remove graffiti shall respond to the Borough by personal delivery or by certified mail:
- (1) Of any objection to the order, within 30 days of the date of the order; or
 - (2) Of notice that the graffiti has been removed, within 90 days of the date of the order, or in the case of the Department of Transportation, within 120 days of the date of the order.
- E. An owner who objects to an order to remove graffiti, pursuant to Subsection D of this section, may institute an action challenging the order before a court of competent jurisdiction within 60 days of the date of the order.
- F. If a property owner does not undertake the removal of graffiti within 90 days of the date of the order, or in the case of the Department of Transportation, within 120 days of the date of the order, unless an action challenging the order to remove graffiti is still pending pursuant to Subsection E of this section, the Borough may remove the graffiti from that property and present the property owner with a detailed itemization of the costs incurred by the Borough, by certified and regular mail, for reimbursement from the property owner.
- G. Whenever the Borough undertakes the removal of graffiti from any building, structure or other exposed surface, the Borough, in addition to assessing the cost of removal as a municipal lien against the premises, may enforce the payment of such assessment, together with interest, as a debt of the owner of the property and may institute an action at law in the Superior Court for the collection thereof.
- H. Any property owner who fails to remove graffiti in accordance with this chapter shall, in addition to the potential municipal lien provided for in Subsection G, be subject to a fine not less than \$250 but not to exceed \$1,000.

BE IT FURTHER ORDAINED by the Governing Body of the Borough of Red Bank that any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

BE IT FURTHER ORDAINED by the Governing Body of the Borough of Red Bank that if any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

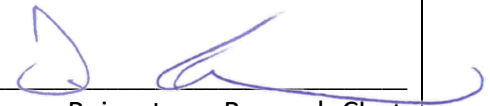
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BE IT FURTHER ORDAINED by the Governing Body of the Borough of Red Bank that this Ordinance shall take effect immediately upon its passage and adoption according to law.

INTRODUCTION						COUNCILMEMBER	FINAL ADOPTION					
Moved	Sec.	Aye	Nay	Abs.	NP		Moved	Sec.	Aye	Nay	Abs.	NP
		X				KRISTINA BONATAKIS			X			
		X				DAVID CASSIDY			X			
		X				NANCY FACEY-BLACKWOOD			X			
		X				BEN FOREST			X			
	X	X				LAURA JANNONE		X	X			
X		X				KATE TRIGGIANO	X		X			
		X				MAYOR WILLIAM PORTMAN			X			
Introduced: August 24, 2023						I hereby certify the above ordinance was adopted by the Borough Council of the Borough of Red Bank, County of Union, State of New Jersey on the aforementioned date.						
Final Adoption: September 14, 2023												





 Laura Reinertsen, Borough Clerk