

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Thompson

Local Law No. ____ of the year 2015

A local law adding Chapter 186 entitled "Graffiti" to the Town of Thompson Code

Be it enacted by the Town Board of the

Town of Thompson

1. §186-1 Definitions.

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

BUILDING – Any structure used for commercial, business or residential purposes and any structure appurtenant to said use, such as garages, fences, retaining walls, facades or any other structure located within the Town of Thompson.

BROAD-TIPPED INDELIBLE MARKER – Any felt-tip marker or similar implement containing a fluid that is not water-soluble and which has a flat or angled writing surface ¼ inch or greater.

GRAFFITI – Any mark, figure, drawing, inscription or other notation, drawn, written, etched, painted or otherwise placed on any surface, building or property, inclusive of the use of stickers or paste-on stamps containing the marks defined herein, without the permission of the owner or occupant thereof.

GRAFFITI IMPLEMENT – Any aerosol spray paint matter or broad-tipped indelible marker with a marking surface of ¼ inch or more in any direction or any other substance or item used to make graffiti and/or related vandalism.

OWNER – Any fee owner or other person exercising a legal possessive right and/or legal control over property.

PERSON – Includes any human being, corporation, partnership, authority, company, municipality, unincorporated association, special improvement district, fire company, the State of New York or any other entity able to sue or be sued.

PROPERTY – Includes any real property and appurtenances and personal property, including all trailers, vehicles or other similar personal property, wherever it may be.

VEHICLE – Anything that constitutes a vehicle pursuant to any other chapter of This Code, in addition to any scooter (motorized or non-motorized), skateboard, rollerblades, roller skates and/or moped.

VENDOR – Any person who offers for sale and/or transfer any graffiti implement to any other

person for value, consideration and/or otherwise.

§186-2 Prohibited acts.

No person shall make graffiti on any public or private building or other structure or any other real or personal property owned by others.

§186-3 Possession of graffiti implements.

A. No person shall carry an aerosol spray paint can, broad-tipped indelible marker or any other graffiti implement under circumstances which evince the intent to violate the provisions of this chapter.

B. It is unlawful for a person to use any object, bicycle or vehicle to assist a person to commit a violation of this chapter.

§186-4 Sale of graffiti implements.

A. Sale and display of graffiti implements; violations.

(1) No person shall sell, offer to sell or give aerosol paint, broad-tipped indelible markers or any other graffiti implements to any person under 18 years of age unless accompanied by an adult parent or guardian.

B. Any person who offers for sale or transfer any graffiti implements shall display at each entrance to the place of business and at, around or about the area where graffiti implements are offered for sale or transfer to the public a sign, to be not less than 8 ½ inches by 11 inches, in red letters, at least 12 points in height, including the following statement:

“It is unlawful to sell any aerosol spray paint or broad-tipped indelible marker to any person under the age of 18. Persons under the age of 18 who possess any graffiti implements may be prosecuted for a crime. Penalties for violation of the graffiti ordinance of the Town of Thompson shall include: fines up to \$1,000, imprisonment up to 15 days in jail, community service, mandatory surcharges and forfeiture of property.”

C. Failure to properly display such sign shall result in a fine of not less than \$25 for a first offense. For any second or subsequent offense within five years of the date of offense on the accusatory instrument, there shall be a minimum fine of \$100 to a maximum fine of \$250 and/or 15 days' imprisonment.

§186-5 Removal of graffiti.

A. The owner, tenant and/or person in control of any building or personal property shall be required to remove any graffiti applied to such property not more than ten days after such graffiti occurs. Failure to remove graffiti shall be a violation of this chapter.

B. Failure or refusal to remove graffiti.

(1) In the event that the owner, tenant and/or person in control of such a building, property or personal property shall fail or refuse to remove graffiti from his property, then said person may be notified by certified mail, mailed to the tax billing address and the property address, or by personal service, by the Code Enforcement Officer or his/her designated agent, that such person shall have a period of up to thirty (30) days from receipt of such notice to complete removal or coverage of such graffiti.

(2) If such owner, tenant and/or person in control fails to comply with the terms of such notice within the time set forth therein, then the Town of Thompson Code Enforcement Officer may order employees of any Town department or a contractor with an agreement approved by the Town Board to engage in maintenance, repair and other services needed to effectuate the elimination or coverage of such graffiti on such property. All costs of such work shall be billed to the owner of the property and, if unpaid after 90 days, shall be certified to the Town of Thompson for inclusion as taxes upon such parcel of property as was benefitted thereby.

§186-6 Liability of parents or guardians.

The parent or legal guardian, other than the state or a local social services department, or a foster parent having custody of an infant over 10 years of age and less than 18 years of age shall, if such infant willfully, maliciously or unlawfully makes graffiti or damages or destroys real or personal property, which personal property is owned and maintained by another, in addition to any other civil remedy a person who has suffered damage may have, may be held liable for such damage or destruction. In no event shall such liability under this section be in excess of the sum of \$5,000. It shall be an affirmative defense to any action brought hereunder that restitution has been made pursuant to §758-a and 353.6 of the Family Court Act or Subdivision 2(g) of §65.10 of the Penal Law. It shall also be an affirmative defense to an action brought under this section that such child has become emancipated from his parent or legal guardian prior to the occurrence of such damage. In lieu of such liability, or in combination therewith, the court may order such infant to perform services for the public good, as permitted by the General Obligations Law.

§186-7 Enforcement.

It shall be the duty of any peace officer, Sheriff Deputy of the County of Sullivan, State of New York or any duly authorized agent of the Town of Thompson who is authorized to issue an appearance ticket or otherwise designated by the Town Board of the Town of Thompson to enforce the provisions of this chapter against any person found to be violating the same.

§186-8 Penalties for offenses.

A. Any person committing an offense against any provision of this chapter shall, except as otherwise specifically set forth, upon conviction thereof, be guilty of a violation, punishable as provided in Article II, General Penalty, of Chapter 1 of the Code of the Town of Thompson. Nothing contained in this article shall prevent the Town from seeking judicial or equitable relief to abate violations of this chapter. Nothing contained herein shall require notice as a prerequisite to the issuance of a summons or appearance ticket for a violation of any of the provisions of this chapter.

B. Any person convicted of a violation of §186-2 or 186-3(A), in addition to the penalties listed above, shall perform not less than 10 hours of community service. If the violation was

committed by a person under the age of 18 years, then one parent or guardian shall be present at the site of the community service for at least one-half of the hours of community service required under this section, unless attendance by the parent or guardian is deemed by the court to be inappropriate or potentially detrimental to the child.

§186-9 Violation of directives.

In addition to and notwithstanding any other remedy for an offense against this chapter, any person violating a directive issued by the Code Enforcement Officer or his/her duly authorized representative, made pursuant to the provisions of this chapter, shall be guilty of a violation punishable as provided in Article II, General Penalty, of Chapter 1 of the Town of Thompson Code. Nothing contained in this chapter shall prevent the Town of Thompson from seeking judicial or equitable relief to abate violations of this chapter. Nothing contained herein shall require notice as a prerequisite to the issuance of a summons or appearance ticket for a violation of any of the provisions of this chapter.

§186-10 Exception.

The provisions of §186-3 shall not apply to any person displaying or in possession of a can or container of spray paint when such a product is being used for or transported immediately to or from a place where it is used for home repair or maintenance, automobile repair or such other employment, trade or occupation customarily requiring the use of said products; or is being transported directly from the place of purchase packaged in such a manner as not to allow easy access to said spray paint while it is being transported.

§186-11 Severability.

If any clause, sentence, paragraph, subdivision, section or part thereof this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment, decree or order shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment, decree or order shall have been rendered and the remainder of this local law shall not be affected thereby and shall remain in full force and effect.

§186-12 Retroactivity

The terms of this local law shall be enforceable retroactively for any violations under §186-5 that are continuing subsequent to the passage and filing of this local law with the Secretary of State. Enforcement shall continue even if the graffiti act occurred prior to enactment of this law, and shall constitute a continuing act as long as it continues to exist subsequent to enactment of this local law.

2. This local law shall take effect immediately upon filing with the Secretary of State.