

Chapter 17

OFFENSES AND MISCELLANEOUS PROVISIONS

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ARTICLE I. IN GENERAL**Sec. 17-1. Furnishing tobacco or tobacco products to inmates prohibited.**

(a) It is unlawful for any person to give and sell to any inmates of a confinement facility operated by or under supervision of the sheriff of the county or for any person to confine, confederate, conspire, aide, abet, solicit, urge, initiate, counsel, advise, encourage, attempt to procure another or others to give or sell to any inmate of a confinement facility operated by or under the supervision of the sheriff of the county tobacco or products containing tobacco in any form.

(b) Any person, firm, or corporation violating the provisions of this ordinance shall upon conviction be guilty of a class 3 misdemeanor and shall be punished accordingly with the maximum fine not exceeding the amount of \$500.00.
(Ord. of 4-6-98, §§ 1, 2)

Sec. 17-2. Prohibition against certain forms of aggressive solicitation.*(a) Legislative findings.*

- (1) The board finds that the increase in aggressive solicitation throughout the county has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and the enjoyment of public places, but also to an enhanced sense of fear, intimidation, and disorder.
- (2) Aggressive solicitation usually includes approaching or following pedestrians, repetitive soliciting despite refusals, and the use of abusive or profane language to cause fear and intimidation, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic.
- (3) The board further finds that the presence of individuals who solicit money from persons at or near banks, automated teller machines, or in public transportation vehicles is especially troublesome because of the enhanced fear of crime in those confined environments. Motorist also find themselves confronted by persons seeking money who,

without permission, wash their automobile windows at traffic intersections, despite explicit indications by drivers not to do so. Such activity carries with it an implicit threat both to persons and property. People driving or parking on public streets and highways frequently find themselves faced with persons seeking money by offering to open car doors or locate parking spaces.

- (4) The board is enacting this chapter pursuant to its police power as stated in North Carolina General Statute § 153A-126 and the other provisions in Article 6 of Chapter 153A of the General Statutes of North Carolina. This law is timely and appropriate because state regulations are insufficient to address the aforementioned problems.
- (5) The law is not intended to limit any person from exercising their constitutional right to solicit funds, picket, protest, or engage in other constitutionally protected activity. Rather, its goal is to protect citizens from the fear and intimidation accompanying certain kinds of solicitation that have become an unwelcome and overwhelming presence in the county.

(b) Definitions. For purposes of this section:

Aggressive manner means and includes:

- (1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
- (2) Following the person being solicited, if that conduct is: (i) intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (3) Continuing to solicit within five feet of the person being solicited after the person has made a negative response, if continuing the solicitation is: (i) intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession;

sion; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

- (4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest shall not constitute obstruction of pedestrian or vehicular traffic;
- (5) Intentionally or recklessly using obscene or abusive language or gestures: (i) intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation; or
- (6) Approaching the person being solicited in a manner that: (i) is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

Automated teller machine means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

Automated teller machine facility means the area comprised of one or more automatic teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

Bank means any financial institution that is in the business of receiving, soliciting, or accepting money, or its equivalent on deposit as a business and includes but is not limited to state banks, national banks, savings and loan associations, savings banks, industrial banks, and credit unions.

Board means the Board of Commissioners for the County of Lee, one of the counties of the State of North Carolina.

Check cashing business means any person duly licensed by the regulatory banking authorities of the State of North Carolina to engage in the business of cashing checks, drafts or money orders for consideration pursuant to the provisions of the banking laws of this state.

Public area means an area to which the public or a substantial group of persons has access, and includes, but is not limited to alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

Solicit means to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.

(c) *Prohibited acts.* It shall be unlawful for any person to solicit money or other things of value, or to solicit the sale of goods or services:

- (1) In an aggressive manner in a public area;
- (2) In any public transportation vehicle, or bus or a station or stop for such vehicles;
- (3) Within 15 feet of any entrance or exit of any bank or check cashing business or within 15 feet of any automated teller machine during the hours of operation of such bank, automated teller machine, or check cashing business without the consent of the owner or other person legally in possession of such facilities. Provided however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
- (4) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property; or

- (5) From any operator of a motor vehicle that is in traffic on a public street or highway, whether in the exchange for cleaning the vehicle's windows, or for blocking, occupying, or reserving a public parking space, or directing the occupant to a public parking space; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the operator or passengers of such vehicle.

(d) *Penalties.* A person violating this section shall be guilty of a class 3 misdemeanor and shall be fined not more than \$50.00.
(Ord. of 12-13-2004, §§ 1—4)

Sec. 17-3. Disposing of personal property valued at less than \$5,000.00.

(a) The county manager is hereby authorized to dispose of any surplus personal property owned by the County of Lee whenever he or she determines, in his or her discretion, that:

- (1) The item or group of items has a fair market value of less than \$5,000.00;
- (2) The property is no longer necessary for the conduct of public business; and,
- (3) Sound property management principles and financial considerations indicate that the interests of the County of Lee would best be served by disposing of the property.

(b) The county manager may dispose of any such surplus personal property by any means which he or she judges reasonably calculated to yield the highest attainable sale price in money or other consideration, including but not limited to the methods of sale provided in Article 12 of North Carolina General Statutes Chapter 160A. Such sale may be public or private, and with or without notice and minimum waiting period.

(c) The surplus property shall be sold to the party who tenders the highest offer, or exchanged for any property or services useful to the County of Lee if greater value may be obtained in that manner, and the county manager is hereby authorized to execute and deliver any applicable title documents. If no offers are received within a reasonable time, the county manager may retain the property, obtain any reasonably available salvage value, or cause it to be

disposed of as waste material. No surplus property may be donated to any individual or organization except by resolution of the board of commissioners.

(d) The county manager shall keep a record of all property sold under authority of this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.
(Ord. of 5-16-2005, §§ 1—4)

Secs. 17-4—17-20. Reserved.

ARTICLE II. GRAFFITI

Sec. 17-21. Purpose and intent.

The board of commissioners (board) is enacting this article to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The board is authorized to enact this article pursuant to its police powers, in order to promote health, safety and welfare of its citizens and maintain the peace and dignity of the county under and pursuant to G.S. 153A-121(a).

The board finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless Lee County (county) acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire areas are affected and become less desirable places in which to be, all to the detriment of the county. The board intends, through the adoption of this article, to provide additional enforcement tools to protect the public and private property from acts of graffiti vandalism and defacement. The board does not intend this article to conflict with any existing anti-graffiti state laws.
(Ord. of 11-2-2009, § 1)

Sec. 17-22. Definitions.

For the purpose of this article, the following words shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

Aerosol paint container means an aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.

Broad-tipped marker means any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth of an inch, containing ink or other pigmented liquid that is not water soluble.

Etching equipment means a tool, device, or substance that can be used to make permanent marks on any natural or manmade surface.

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or despite advance authorization, is otherwise deemed a public nuisance by the board.

Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

Paint stick or graffiti stick means 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 of at least one-eighth of an inch in width.

Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
(Ord. of 11-2-2009, § 2)

Sec. 17-23. Prohibited acts.

(a) *Defacement.* It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any county-owned property or, without the permission of the owner or occupant, on any non-county-owned property.

(b) *Exception.* This article does not apply to temporary, easily removable chalk or other water soluble markings on public or private sidewalks, driveways or other paved surfaces which are used in connection with traditional children's activities, such as drawings, or bases for kick ball, hopscotch or similar activities, nor shall it be construed to prohibit tempo-

rary, easily removable chalk or other water soluble markings used in connection with any lawful business or public purpose or activity.

(c) *Possession of graffiti implements.*

(1) *Public places.* It is unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility or other public building or structure owned or operated within the county, or within 50 feet of an overpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the county.

(2) *Minors.* It is unlawful for any person under the age of 18 years old to possess any graffiti implement.

(Ord. of 11-2-2009, § 3)

Sec. 17-24. Graffiti as nuisance.

(a) The existence of graffiti on public or private property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provision specified in this article.

(b) Both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property shall keep the property clear of graffiti, at all times.
(Ord. of 11-2-2009, § 4)

Sec. 17-25. Removal and abatement of graffiti.

(a) *Notice.* Whenever the county becomes aware of the existence of graffiti on any property, the county is authorized to remove the graffiti after giving, or causing to be given, written notice to remove or effectively obscure such graffiti to the property owner, such property owner's agent or manager, or any other person in possession or control of the property.

(b) *Removal by property owner.* The property owner shall remove graffiti as soon as possible, but no later than ten days from the date of receiving

written notice from the county. The removal requirements of this section shall not apply in the following situations:

- (1) *Hardship.* If the property owner or other responsible party in control of the property lacks the financial ability to remove the graffiti, and signs a consent for the county to remove the graffiti; or
- (2) *Removal procedure.* If the property owner or responsible party in control of the property has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of 15 days after service by first class mail of notice of the defacement.

(c) *Removal by county.* If the property owner fails to remove the graffiti, the county is authorized to enter upon private or public property for the purpose of graffiti removal or remediation. The county shall seek consent from the property owner before entering private property. Failure of the owner to remove the graffiti or to give consent for the county to remove the graffiti, shall result in the county removing the graffiti and summarily abating the nuisance, and shall subject the owner to a penalty of \$100.00, to be recovered by the county, if not paid within 15 days of issuance of a citation, in a civil action in the nature of debt.

(Ord. of 11-2-2009, § 5)

Sec. 17-26. Appeals.

The property owner or party responsible for maintenance of the property who fails to remove graffiti or give consent to the county to remove graffiti and is assessed a civil penalty of \$100.00 under section 17-25 (above), may appeal the assessment to the county manager or his designee by giving written notice of appeal stating the reasons therefore within seven days of assessment of the penalty. Within ten days of the decision of the county manager, or his designee, written notice of appeal may be sent to the county board of adjustment for determination of whether the penalty shall stand or be overturned, but shall not otherwise be appealed.

(Ord. of 11-2-2009, § 6)

Sec. 17-27. Enforcement.

(a) *Conviction.* In accordance with G.S. 14-4 and G.S. 153A-123 each violation of section 17-23 (above) shall constitute a misdemeanor, and shall be punished by a fine not exceeding \$500.00 or imprisonment of a term not exceeding 30 days.

(b) *Restitution.* In addition to any punishment imposed, the court may order any person convicted of a violation of this article to make restitution to the victim or entity which remediated the graffiti for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. The court may determine the amount, terms and conditions of the restitution. In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make restitution.

(c) *Community service.* In lieu of, or as a part of, the penalties specified in this article, a minor or adult may be required to perform community service as described by the court. Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that involves graffiti removal.

(Ord. of 11-2-2009, § 7)