

Authority: Licensing and Standards Committee Item 5.1, adopted as amended,
by City of Toronto Council on July 12, 13 and 14, 2011
Enacted by Council: October 25, 2011

CITY OF TORONTO

BY-LAW No. 1218-2011

To adopt a new City of Toronto Municipal Code Chapter 485, Graffiti.

WHEREAS subsection 8(1) of the *City of Toronto Act, 2006*, S.O. 2006, c.11, Schedule A, as amended, (the "Act") provides the City with broad authority to provide any service or thing the City considers necessary or desirable for the public; and

WHEREAS section 8(2) of the Act authorizes the City to pass by-laws in respect of certain matters, including:

- A. The economic, social and environmental well-being of the City;
- B. The health, safety and well-being of persons;
- C. Protection of persons and property, including consumer protection; and
- D. Structures, including fences and signs.

WHEREAS section 8(3) of the Act provides that a by-law in respect of section 8(2) of the Act may:

- A. Regulate or prohibit respecting the matter;
- B. Require persons to do things respecting the matter; and
- C. Provide for a system of licenses respecting the matter.

WHEREAS section 386 of the Act provides the City with authority to enter upon land at any reasonable time for the purpose of doing a matter or thing that a person has been directed to do under the Act or under a by-law under the Act; and

WHEREAS the Council of the City of Toronto wishes to enact this by-law in order to protect the economic, social and environmental well-being of the City from graffiti vandalism; and

WHEREAS the presence of graffiti vandalism suggests disorder and lawlessness and diminishes buildings and streets; and

WHEREAS this by-law is intended to apply to all property, as that term is defined in the by-law, located within the City of Toronto; and

WHEREAS the Council of the City of Toronto wishes to enact this by-law in order to eliminate graffiti vandalism that has a detrimental impact on property owners and neighbourhoods, while supporting graffiti art and other street art that adds vibrancy and artistic delight to City streets; and

WHEREAS notice of the intention to enact this by-law has been provided in accordance with the Act and its regulations;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The City of Toronto Municipal Code is amended as follows:

- A. By repealing Chapter 485, Graffiti.
- B. By adding the following as a new Chapter 485, Graffiti:

§ 485-1. Definitions.

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

ART MURAL — A mural commissioned or approved prior to its creation by a property owner or occupant, where the primary purpose is to aesthetically enhance the surface it covers and the general surroundings.

EXECUTIVE DIRECTOR — The Executive Director, Municipal Licensing and Standards, or his or her designate.

GRAFFITI ART — Markings made or affixed to property that are approved by the property owner or occupant, where the markings aesthetically enhance the surface they cover and the general surroundings, having regard to the community character and standards.

GRAFFITI VANDALISM — Any deliberate markings made or affixed on property that is not currently exempted or regularized by the Graffiti Panel, Executive Director or Council and:

- A. was made or affixed without the permission of the owner;
- B. is considered by the Executive Director to be a tag;
- C. for which there are reasonable grounds to believe that it may incite hatred or violence against any person or identifiable group; or
- D. contains profane, vulgar or offensive language.

INTERIOR SPACE — A fully enclosed space that may or may not have a roof and which includes the interior of the walls, ceiling, floor, and any other partition that defines the interior space, as applicable.

OCCUPANT — Includes a lessee or person in possession of the property who, under the terms of a lease, is required to repair and maintain the property.

OFFICER — A City employee whose duties include the enforcement of this chapter.

OLD CHAPTER 485 — Chapter 485 of the Toronto Municipal Code as it read on December 31, 2011.

OWNER — Includes the person for the time being managing or receiving the rent for the land, premises, structure, or thing in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would receive the rent if the land, premises, structure, or thing were let.

PROPERTY — A building or structure or land or part of a building or structure or land, and includes all vehicles, mobile structures, outbuildings, fences, erections thereon whether heretofore or hereafter erected, and any other things on the property.

PUBLIC PLACE — A place to which the public has access, as of right or by invitation, expressed or implied.

TAG — A stylized signature or logo that is intended to identify an individual or group or any other marking used for a like purpose or effect.

§ 485-2. Application to interior space.

This chapter does not apply to the following:

- A. An interior space of a building.
- B. An interior space of any other structure that is not otherwise visible from a highway or other public place.
- C. A thing located wholly within the interior space of a building, or a structure as described in Subsection B.

§ 485-3. Graffiti vandalism prohibited.

- A. No person shall place or cause or permit graffiti vandalism to be placed on any property.
- B. The owner or occupant of property shall maintain the property free of graffiti vandalism.

§ 485-4. Notice to comply.

- A. An officer who finds a contravention of this chapter may give written notice to the owner or occupant of the property, requiring compliance with this chapter within the time period specified in the notice but no sooner than 72 hours after the notice is given.
- B. The notice may be served personally on the person to whom it is directed or by registered mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

- C. If there is evidence that the person in possession of the property is not the registered property owner, the notice shall be served on both the registered property owner and the person in possession of the property.
- D. If the address of the owner is unknown or the City is unable to effect service on the owner or occupant under Subsection B, a placard stating the terms of the notice and placed in a conspicuous place upon land on or near the property, structure or thing shall be deemed to be sufficient notice to the owner.
- E. Review of notice.
- (1) A notice, including notice by placard, given or placed under this section, shall contain the statement that the owner or occupant may, upon receipt of notice under this section, within the time prescribed in the notice to comply, request that the issuance of the notice be reviewed by the Graffiti Panel on the basis that the markings are exempt as graffiti art or an art mural.
 - (2) The Graffiti Panel in Subsection E(1) shall be comprised of cross divisional City staff appointed by the Deputy City Managers responsible for the divisions.
 - (3) A request for review under Subsection E(1) shall be in writing to the Executive Director, as indicated on the notice.
 - (4) Where an occupant requests that the issuance of the notice be reviewed, the occupant shall file with the Executive Director a written declaration that the occupant has the consent of the owner to maintain the markings on the property.
 - (5) When an application for an exemption has been received, the Executive Director shall prepare a report and refer the matter to the Graffiti Panel for consideration and shall not take any action under this chapter until the matter has been dealt with by the Graffiti Panel.
 - (6) Upon receiving an application for an exemption and upon the payment of any prescribed fees, the Graffiti Panel shall review the application, having regard to the community character and standards, and:
 - (a) Grant the exemption, with the condition that the markings be either maintained in a state of good repair or removed, with or without any other conditions, cancel the notice, and register the graffiti art or art mural in a municipal database; or
 - (b) Confirm the notice and direct that a second notice to remove the graffiti vandalism be given under this section.
 - (7) Subsection E(1) does not apply to a second notice given under subsection E(6)(b).

- F. If in the opinion of the Executive Director there are reasonable grounds to believe that the graffiti vandalism may incite hatred or violence against any person or identifiable group, and that the continuance of such graffiti vandalism will increase the harm to the person or identifiable group to whom it is directed, the Executive Director may enter upon any land prior to notice being given and at any reasonable time for the purpose of removing the graffiti vandalism.
- G. For the purposes of subsection F, the Executive Director shall provide notice as provided for under this section, except that subsection E shall not apply to the notice.
- H. Costs incurred by the City in doing the work required under subsection F will be paid by the City.

§ 485-5. Referrals to the Graffiti Panel.

- A. When a complaint is received from the public with respect to a specific marking made or affixed to property and the Executive Director is not able to ascertain whether the piece in question constitutes graffiti vandalism, the matter may be referred by the Executive Director to the Graffiti Panel.
- B. When a request for regularization is received in accordance with § 485-6(A) and the Executive Director is not able to ascertain whether the piece should be regularized, the matter may be referred by the Executive Director to the Graffiti Panel.
- C. When the Executive Director refers a complaint or a request for regularization to the Graffiti Panel, the Executive Director shall notify the owner of property that is the subject of a complaint or request for regularization, as per § 485-4(B), about the nature of the complaint or request for regularization and about the Graffiti Panel review process.
- D. When a referral is made to the Graffiti Panel, the Graffiti Panel shall review the matter, having regard to the community character and standards, and:
 - (1) Determine whether the markings should be prohibited as graffiti vandalism and direct that a notice to remove the graffiti vandalism be given; or
 - (2) Determine that the markings are graffiti art or an art mural and direct the graffiti art or art mural to be registered in a municipal database with the condition that the markings be either maintained in a state of good repair or removed and with or without any other conditions that the Graffiti Panel may require.
- E. Subsection 485-4E does not apply to a notice given under subsection D(1).

§ 485-6. Regularization of graffiti art and art murals.

- A. Business Improvement Areas, Resident Associations, Ratepayer Associations, other community groups, and individual property owners or occupants may apply to the Executive Director to have specific pieces of graffiti art or specific art murals, not located on a highway or other public space, regularized.

- B. If the Executive Director is of the opinion that specific markings on property are graffiti art or an art mural, the Executive Director may deem the specific piece to be regularized.
- C. Graffiti art and art murals that have been reviewed by the Graffiti Panel and have not been considered to be prohibited shall be regularized as long as no substantive changes are made to them.
- D. Regularized graffiti art or art murals shall be registered in a municipal database.
- E. To maintain their exempted and regularized status and registration in a municipal database, graffiti art and art murals must be maintained in a state of good repair.

§ 485-7. Failure to comply; removal by City; costs.

- A. If an owner or occupant fails to comply with a notice given under § 485-4A or is refused an exemption and fails to comply with the second notice given under § 485-4E(6)(b), the Executive Director may enter upon any land at any reasonable time for the purposes of doing the things described in the notice.
- B. Costs incurred by the City in doing the work required under subsection A and any other or ancillary costs required to carry out the doing of things described in the notice may be recovered by action or by adding the costs to the tax roll and collecting them in the same manner as taxes.

§ 485-8. Offences.

- A. Any person who contravenes any provision of this chapter is guilty of an offence.
- B. In addition to offences referred to in Subsection A, every person is guilty of an offence under this chapter who:
 - (1) Hinders or obstructs or attempts to hinder or obstruct any person exercising a power or performing a duty under this chapter;
 - (2) Neglects or refuses to produce or provide any information or thing to any person acting pursuant to an order made under section 378 of the *City of Toronto Act, 2006*;¹
 - (3) Knowingly makes, participates in, assents to or acquiesces in the provision of false information in a statement, affidavit, application or other document prepared, submitted or filed under this chapter; or
 - (4) Is a director or officer of a corporation and knowingly concurs with actions taken by or on behalf of the corporation in relation to an offence described in Subsections B(1) to (3).
- C. Each offence in Subsection B is designated as a continuing offence and is subject to, for each day or part of a day that the offence continues, a fine.

¹ Editor's Note: See S.O. 2006, c. 11.

§ 485-9. Transitional matters.

- A. Any notices to comply issued under Old Chapter 485 shall be deemed to continue as if they had been issued under this chapter.
 - B. Where an owner or occupant failed to comply with a notice to comply under Old Chapter 485 and the City performed the work required to be done by the notice to comply, the City may recover its costs incurred in doing the work in accordance with this chapter.
 - C. Where a review of notice under § 485-4(E) of Old Chapter 485 is pending at the time this by-law comes into force, the review will be done by the Graffiti Panel in accordance with § 485-4(E)(6) of this chapter.
2. This by-law comes into force on January 1, 2012.

ENACTED AND PASSED this 25th day of October, A.D. 2011.

FRANCES NUNZIATA,
Speaker

ULLI S. WATKISS,
City Clerk

(Corporate Seal)