



CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2011-67

A BY-LAW TO PREVENT UNSIGHTLINESS OF PROPERTY BY PROHIBITING GRAFFITI ON PROPERTY AND REQUIRING THAT PROPERTY BE KEPT FREE OF GRAFFITI.

WHEREAS the *Municipal Act*, 2001, S.O. c.25 Section 9, provides that Section 8 & 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs, as they consider appropriate and (b) enhance their ability to respond to municipal issues;

AND WHEREAS the *Municipal Act*, 2001 S.O. c.25 Section 128, provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that in the opinion of Council are or could become or cause public nuisances.

AND WHEREAS the opinion of Council of the Town of Newmarket is that graffiti is a public nuisance;

AND WHEREAS the Council of the Town of Newmarket deems it advisable to enact such a by-law;

THEREFORE BE IT ENACTED by the Council of the Corporation of the Town of Newmarket as follows:

SECTION 1 - DEFINITIONS

In this by-law:

"Art Mural" means a mural for a designated surface and location that has been deliberately implemented for the purpose of beautifying the specific location.

"Graffiti" means one or more letters, symbols, figures, etchings, scratches, inscriptions, stains or other markings that disfigure or deface or object, howsoever made or otherwise affixed on the structure or object.

"Interior Space" includes an interior wall, ceiling, floor and any other partition that defines the interior space.

"Officer" means any person or persons appointed by Council to administer and enforce the provisions of this By-law and includes his or her designates and shall include a police officer appointed by the York Regional Police Service.

"Owner" means the registered owner, occupant or tenant of a property, or a person who, for the time being or permanently, is managing or receiving the rent from a property, whether on his or her own account or on account of an agent or trustee of any other person, or any one of the aforesaid;

"Property" means a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property.

"Public Place" means a place to which the public has access, as of right or by invitation, expressed or implied.

"Town" means the Corporation of the Town of Newmarket.

SECTION 2 - APPLICATION OF INTERIOR SPACE

- 2.1 This by-law does not apply to the interior space on a property or to an object located entirely within the interior space on a property.

SECTION 3 - GRAFFITI PROHIBITED

- 3.1 No person shall place or cause or permit graffiti to be placed on any property.
- 3.2 The owner or occupant of a property shall maintain the property free of graffiti.

SECTION 4 - HINDRANCE OR OBSTRUCTION

4. No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law.

SECTION 5 - ORDER TO DISCONTINUE ACTIVITY

- 5.1 Where the Town is satisfied that a contravention of this by-law has occurred, the Town may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity.
- 5.2 An order under S. 5.1 of this by-law shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred;
 - (b) and the date by which there must be compliance with the order.
- 5.3 Any person who contravenes an order under S. 5.1 of this by-law is guilty of an offence.
- 5.4 The notice may be served personally on the person to whom it is directed or by registered mail to the last known address of the person, in which case it shall be deemed to have been given on the 5th day after it is mailed.

SECTION 6 – WORK ORDER

- 6.1 Where the Town is satisfied that a contravention of this by-law has occurred, the Town may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.
- 6.2 An order under S. 6.1 of this by-law shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred;
 - (b) and the work to be done and the date by which the work must be done.
- 6.3 An order under S. 6.1 may require work to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.
- 6.4 Any person who contravenes an order under S. 6.1 of this by-law is guilty of an offence.
- 6.5 The notice may be served personally on the person to whom it is directed or by registered mail to the last known address of the person, in which case it shall be deemed to have been given on the 5th day after it is mailed.

SECTION 7 - POWERS OF INSPECTION

- 7.1 The Town may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) this by-law;
- (b) a direction or order of the Town made under this by-law; or,
- (c) an order made under S. 431 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended.

7.2 For the purposes of conducting an inspection pursuant to S. 7.1 of this by-law, the Town may, in accordance with the provisions of S. 436 of the *Act*:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require the information from any person concerning a matter related to the inspection; and,
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

SECTION 8 - REMEDIAL ACTION

8.1 If a person fails to do a matter or thing, including comply with an order under this by-law, as directed or required by this by-law, the Town may, in default of it being done by the person directed or required to do it, do the matter or thing at the person's expense. The Town may recover the costs of doing a matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes.

8.2 The costs outlined in S. 8.1 of this by-law shall include interest calculated at a rate of prime + 2 per cent, calculated for the period commencing on the day the Town incurs the costs and ending on the day the costs, including the interest, are paid in full.

8.3 The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the Town shall register a discharge of the lien in the proper land registry office.

- (a) Enter upon the property and remove the graffiti from the property.
- (b) Do so at the expense of the owner of the property.
- (c) Recover the costs incurred by the Town from the owner of the property by action or by adding the costs to the tax roll and collecting them in the same manner as taxes.

SECTION 9 – OFFENCES

9.1 Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided in the *Provincial Offences Act*.

9.2 Any person who contravenes any provision of this By-law or an order issued pursuant to Section 4.1 of this By-law is guilty of an offence. Pursuant to subsection 429(2)(a) of the *Municipal Act*, 2001 all contraventions of this By-law or orders issued under Section 4.1 of this By-law are designated as multiple offences and continuing offences. A multiple offence is an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of a by-law.

SECTION 10 - FINES

- 10.1 Every person who is guilty of an offence under this by-law shall be subject to the following penalties:
- a) Upon a first conviction, the minimum fine shall be \$350.00 and the maximum fine shall be \$100,000.00;
 - b) Upon a second or subsequent conviction for the same offence, a fine shall be a minimum of \$350.00 and the maximum fine shall be \$100,000.00;
 - c) Upon conviction for a continuing offence, the minimum fine shall be \$350.00 and the maximum fine shall be \$10,000.00 for each day or part of a day that the offence continues;
 - d) Upon conviction of a multiple offence, for each offence included in the multiple offences, the minimum fine shall be \$350.00 and the maximum fine shall be \$10,000.00.
- 10.2 For the purposes of this by-law, "multiple offences" means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of a provision of this by-law.
- 10.3 For the purposes of this by-law, an offence is a second or subsequent offence if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.

SECTION 11 – SEVERABILITY

- 11.1 If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, such section or part of section shall not be construed as having persuaded Council to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in full force and effect.


SECTION 12 – COMING INTO FORCE

- 12.1 This by-law shall come into force and effect on the day it is passed.

SECTION – 13 SHORT TITLE

- 13.1 This by-law may be referred to as the "Anti-Graffiti By-law."

ENACTED THIS 7TH DAY OF NOVEMBER, 2011



Tony Van Bynen, Mayor



Anita Moore, Town Clerk