



CITY OF CAPE TOWN | ISIXEKO SASEKAPA | STAD KAAPSTAD

CITY OF CAPE TOWN

DRAFT GRAFFITI BY-LAW

To provide for prohibition of graffiti within the area of jurisdiction of the City of Cape Town; to provide for removal of graffiti and restoration of surfaces affected by graffiti; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the City has in terms of section 156(1) read with Schedule 5 of the Constitution the right to administer public nuisances and billboards and the display of advertisements in public places;

WHEREAS graffiti affects the quality of life of all residents and visitors, and constitutes a public nuisance which damages the image of the City known worldwide for its beauty and makes it a less desirable place to visit, live and work in;

AND WHEREAS the City wishes to provide for the removal of graffiti on both public property and private property, the restoration of such property and the protection of public and private property from acts of graffiti vandalism;

AND NOW THEREFORE, BE IT ENACTED by the Council of the City of Cape Town as follows:-

DEFINITIONS

1. In this By-law, unless the context indicates otherwise, the following words and phrases shall have the meaning assigned to them, and -

"apply" means to paint, including spray paint, draw, write, mark, engrave, etch, scratch, or otherwise affix to or express on any natural surface or man-made surface, utilising any graffiti implement whatsoever and **"applying"**, **"applied"** and **"application"** have corresponding meanings;

"authorised official" means an employee of the City responsible for the enforcement of this By-law;

"City" means the City of Cape Town established by Provincial Notice 479 of 2000 dated 22 September 2000 in terms of section 12 of the Local Government: Municipal Structures Act, 1998(Act No. 117 of 1998), and includes any committee or sub-council established by the City or any employee or duly authorised agent of the City, acting in connection with this By-law by virtue of a power vested in the City and delegated to such employee or agent;

"compliance notice" means a notice issued in terms of section 4;

"graffiti" means any one of or a combination of any inscription, word, figure (other than figure indicating a street number), letter, sign, symbol, sketch, picture, drawing, mural or design that is applied to any natural surface or man-made surface on any property and which is visible to a person from a public place and which has not been authorised by the City;

"graffiti implement" means an aerosol paint container, a broad tipped marker, gum label, etching equipment, brush or any other device capable of leaving a visible mark on or scarring any natural surface or man-made surface;

"mural art" means art in the form of a painting, applied directly to a wall;

"natural surface" means the surface of any rock, tree or other natural feature;

"person" includes any organ of state, natural or juristic person including companies incorporated or registered as such under any law and any body of persons, whether incorporated or not, functioning as a single entity for whatever purpose;

"public place" means any public road, public street, thoroughfare, bridge, subway, footway, foot pavement, foot path, sidewalk or similar pedestrian portion of a road reserve, lane, square, open space, garden, park or enclosed place vested in the City, or other state authority or indicated as such on any official records;

"private property" means immovable property owned by a private person;

"public property" means immovable property owned by an organ of state;

"remove" means restore with full functionality of purpose to the same or to a better condition than prior to the application of graffiti to the satisfaction of the City, and **"removal"**, **"removing"** and **"removed"** have corresponding meanings;

"organ of state" means -

- (a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution -
 - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

"owner" means –

- (a) the owner of any property or any person in whose name the land on which a building was or is erected and is registered in the deeds office;

- (b) any person who, as agent or otherwise, undertakes the management, maintenance or collection of rentals or other monies in respect of the property; and
- (c) any person who is entitled to the benefit of the use of such building or land, or who enjoys such benefit.

DECLARATION OF NUISANCE

2. The City declares the existence of graffiti anywhere within its area of jurisdiction to be a public nuisance, which is subject to removal in terms of this By-law.

PROHIBITION

3.(1) Subject to section 9, no person shall, within the area of jurisdiction of the City, apply graffiti or cause graffiti to be applied to any –

- (a) property;
- (b) natural surface; or
- (c) wall, fence, structure or thing in any street or other public place.

(2) Any person who aids or assists the person referred to in subsection (1) in the application of graffiti as contemplated therein, in contravention of this By-law, shall be guilty of an offence.

COMPLIANCE NOTICE

4.(1) The City may, where a person has contravened section 3, serve a notice on such person ordering him or her to remove the graffiti by a date specified in the notice, and such notice must -

- (a) specify the address or location of the property, natural surface or any other structure or thing to which the graffiti has been applied;
- (b) describe in general terms the graffiti which has been applied; and
- (c) state that if the graffiti in question is not removed in accordance with the notice, the City or an outside agent appointed by the City may effect such removal at the cost of the person to whom the notice is addressed.

(2) The City may, where it is unable to determine the identity of the person referred to in subsection (1), serve a notice on the owner requiring him or her to remove the graffiti as contemplated in subsection (1).

(3) Any costs incurred by the City in terms of subsection (1) (c), as certified by a competent authority in the City, shall constitute a liquid claim in favour of the City and recoverable in a court of competent jurisdiction.

- (4) Where the recovery of the costs referred to in subsection (3) will –
- (a) impose on an owner of property a financial burden beyond the ability or financial capacity of such owner; or
 - (b) affect the same property repeatedly,

the authorised official, subject to any law or any policy of the City, may waive the whole or a part of the costs incurred.

DUTY OF OWNER

5.(1) Every owner and every occupant of property must at all times maintain free of graffiti any wall, fence, building, structure or thing located on such property.

(2) Every owner of property must remove from that property any unsightly accumulation of graffiti within 10 days of the owner becoming aware of the graffiti on his or her property.

SERVICE OF NOTICES

6.(1) Where a compliance notice is served on any person in terms of section 4 it is deemed to have been properly served on such person when it has been served –

- (a) personally to him or her or in the case of a juristic person to a person apparently employed at its registered office;
- (b) at his or her place of residence or business to a person apparently over the age of sixteen years;
- (c) by registered or certified mail to such person's last known residential or business address as appears in the records of the City or records at the Deeds Office, or in the case of a juristic person, to its registered office and an acknowledgment of posting is produced;
- (d) on the agent or representative of such person in the Republic in one of the aforesaid manners, if an address in the Republic is unknown;
- (e) by posting it in a conspicuous place on the property to which it relates, for a period of fourteen calendar days, if the address and agent are unknown.

(2) The failure to make proper service on any person as required in terms of this By-law shall not invalidate any proceedings held in respect of contraventions of this By-law.

RIGHT OF ENTRY

7. Where property is not maintained in accordance with section 5, an authorised official may enter the property and remove the graffiti, provided that he or she first gives at least 15 days' notice to the owner by way of registered mail to the last known address of the owner, or by posting a notice on the property.

COSTS

8.(1) The City shall keep an account of the costs referred to in section 4, including all direct and indirect expenses, incurred in removing graffiti and shall render a statement of such costs to the person responsible for the removal thereof, once the graffiti has been removed.

(2) If the costs and expenses, or any portion thereof, incurred by the City in the removal of the graffiti remains unpaid after 30 days calculated from the date of rendering of the statement in terms of subsection (1), such costs and expenses or portion shall constitute a municipal service fee as contemplated in section 118(1)(b) of the Local Government: Municipal Systems Act, 2000(Act No. 32 of 2000).

PERMITS FOR MURAL ART AND DECORATIONS

9.(1) Any person who intends applying any one of or a combination of any inscription, word, figure, letter, sign, symbol, sketch, picture, drawing or design to any natural surface or man-made surface on any property, which will be visible to a person from a public place, must apply in writing to the Director of Arts and Culture in the Directorate of Economic, Social Development and Tourism for a permit to do so.

(2) The application for a permit referred to in subsection (1) must be accompanied by proof of the consent of the owner of the property, interested and affected parties, and surrounding property owners.

(3) In the application full details must be provided as to the motivation for applying the inscription, word, figure, letter, sign, symbol, sketch, picture, drawing, mural or design, the intended size thereof and the materials and implements to be used, and an accurate likeness, illustration or depiction of the intended work.

(4) The Director of Arts and Culture in the Directorate of Economic, Social Development and Tourism must, on receipt of the application referred to in subsection (1), consult with any affected department of the City or person.

(5) The City may refuse or grant such application, subject to such conditions as it may impose, and must within 30 days advise the applicant of its decision in writing.

(6) In the event of the City granting such application, a permit will be issued in writing to the applicant, subject to such conditions as may be imposed by the City.

(7) The City may designate certain spaces to be utilized for such mural art, and these spaces will be identified in consultation with the relevant communities, ward forums and subcouncils.

(8) A person may apply to utilize a designated space referred to in subsection (7) for a period of three months in writing to the Director of Arts and Culture in the Directorate Social Development, and -

- (a) may be authorized to utilize a designated space for mural art or decorations;
- (b) must remove the art or decorations after the expiry of the three month period;
- (c) may apply for a three month extension of the authorization.

(9) The City may request the immediate removal of any mural art or decoration at any time. The City also reserves the right to remove any mural art or decoration at any time.

PENALTIES

10.(1) Any person convicted of an offence in terms of sections 3 of this By-law shall -

- (a) upon conviction for a first offence be liable to a fine of R10 000 or 3 months imprisonment;
- (b) upon conviction for a second offence or subsequent offences, be liable to a fine of R20 000 or 6 months imprisonment, or to both such fine and such imprisonment.

(2) In addition to a penalty contemplated in subsection (1), the convicted person will be liable –

- (a) to pay an amount equal to the cost or estimated cost of removal of the graffiti from the affected property, and where the cost of removal of the graffiti from the affected property has been borne by the City or by the owner of the property, to pay the amount so ordered to the City or to the owner, as the case may be;
- (b) to a further penalty deemed appropriate by the court in default of payment of the ordered amount to the City or to the owner of the property, as the case may be.

(3) In the case of a continuing offence, the person convicted shall be liable to any additional penalty the court may deem appropriate.

(4) A court convicting a person of an offence under this By-law may impose alternative sentencing as an appropriate penalty.

SHORT TITLE

11. This By-Law is called the City of Cape Town: Graffiti By-Law.