

The Corporation of the City of Kenora

By - Law Number 50 - 2016

A By-Law to Prohibit the Possession of Graffiti Implements and the Placement of Graffiti on Property and Requiring that Property Be Kept Free of Graffiti in the City of Kenora

Whereas sections 9, 10, and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "*Municipal Act, 2001*"), provide that the councils of municipalities may pass by-laws for the purposes of public safety and the protection of municipal and private property; and

Whereas section 128 of the *Municipal Act, 2001* provides that the councils of municipalities may pass by-laws prohibiting and regulating with respect to public nuisances, including matters that, in the opinion of Council, are or could become public nuisances; and

Whereas graffiti on both public and private property creates a condition within the City of Kenora which, among other things, results in the deterioration of property value and which is detrimental to the quality of life in the City; and

Whereas in the opinion of the Council of the City of Kenora, graffiti is a public nuisance; and

Whereas section 425 of the *Municipal Act, 2001* provides that the councils of municipalities may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the *Municipal Act, 2001* is guilty of an offence;

Now Therefore the Council of The Corporation of the City of Kenora hereby enacts as follows:

Short Title

1. This By-law may be cited as the "Graffiti Control By-law".

Definitions

2. In this By-law, the following terms shall have the following meanings:
 - a) "**aerosol paint container**" means any aerosol container which is designed or adapted for the purpose of spraying paint;
 - b) "**broad tip marker**" means any marker or similar implement which has a writing applicator which is 1.25 cm² or greater and which dispenses anything other than a solution which can be removed with water after the solution dries;
 - c) "**customer service box**" means either a publication distribution box or a courier drop box;
 - d) "**courier drop box**" means an unattended box into which any member of the general public may deposit letters or parcels to be delivered by courier companies;

- e) “**graffiti**” includes any letter, symbol, etching, figure, picture, drawing, inscription, mark, stain or other marking made or put upon the exterior of a property which disfigures or defaces the property but does not include a sign, public notice or any marking authorized by the Municipality or by a provincial or federal law;
- f) “**graffiti implement**” includes an aerosol paint container, broad tip marker, paint stick, chalk, graffiti stick or bleeder or any other device capable of applying graffiti;
- g) “**Municipality**” means The Corporation of the City of Kenora;
- h) “**officer**” means a police officer or any person appointed by the Council of the Municipality to enforce the provisions of this by-law, including a municipal law enforcement officer;
- i) “**owner**” includes:
 - i. the person for the time being managing or receiving the rent of the property or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee for any other person, or who would receive the rent if the property or premises were let; and
 - ii. the lessee or occupant of a property who, under the terms of a lease, is required to repair and maintain the property;
- j) “**paint stick, graffiti stick or bleeder**” means any implement containing paint, wax-epoxy, or other similar substance; and
- k) “**property**” means both real and personal property and includes buildings and structures or parts of buildings or structures, and includes the lands and premises appurtenant thereto and includes all physical features of such lands such as rocks, trees and any other surface on which graffiti is capable of being applied and all vehicles, chattels, mobile homes, mobile buildings, mobile structures including customer service boxes and courier drop boxes, out-buildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property and highways.

Interpretation

- 3. Unless otherwise defined, the words and phrases used in this by-law have their normal and ordinary meaning.
- 4. Words in the singular include the plural and words in the plural include the singular.
- 5. Headings are inserted for convenience of reference purposes only and shall not affect the meaning or interpretation of the provisions of this by-law.

Graffiti Prohibited

- 6. No person shall place graffiti on property or cause or permit graffiti to be placed on property.

7. No owner of property shall fail to maintain such property free of graffiti.

Possession of Graffiti Implements Prohibited

8. No person shall possess any graffiti implement with the intent to use the implement for the purpose of placing graffiti contrary to the provisions of this by-law.

Orders Made Under Sections 444 and 445 of the *Municipal Act, 2001*

9. Any person who contravenes an order made under section 444 of the *Municipal Act, 2001* is guilty of an offence.

10. Any person who contravenes an order made under section 445 of the *Municipal Act, 2001* is guilty of an offence.

11. An order may be served:

a) personally on the person to whom it is directed;

b) by registered or certified mail to the last known address of the person to whom it is directed, in which case it shall be deemed to have been given on the third day after it was mailed; or

c) with respect to an order to be served on an owner of real property, by placing a placard stating the terms of the order in a conspicuous place upon or near the real property to which the order relates.

Remedial Action

12. If a person is directed or required to do a matter or thing under this by-law or pursuant to an order made under section 445 of the *Municipal Act, 2001*, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense.

Offences and Penalties

13. Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine or other penalty as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.

Repeal

14. By-law No. 128-2010 of the Municipality is hereby repealed.

Effective Date

15. This By-law shall come into force and take effect on the final passing thereof.

By-Law Read a First and Second Time this 17th Day of May, 2016

By-Law Read a Third and Final Time this 17th Day of May, 2016

The Corporation of the City of Kenora:-

David S. Canfield, Mayor

Heather L. Kasprick, City Clerk