

THE CORPORATION OF THE TOWNSHIP OF WILMOT

BY-LAW NO. 2011 – 35

Being a by-law to regulate graffiti on property in The Township of Wilmot

WHEREAS section 128(1) of the *Municipal Act, 2001, S.O. 2001, c.25*, as amended (the “Act”) states 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 section 128(2) of the Act states that the opinion of Council under section 128, if arrived at in good faith, is not subject to review by any Court;

AND WHEREAS it is the opinion of Council that graffiti on property is a public nuisance;

NOW THEREFORE the Council of The Corporation of the Township of Wilmot enacts as follows:

DEFINITIONS

1. In this by-law:

“Township” means the Corporation of the Township of Wilmot

“Council” means the Municipal Council of the Township;

“Graffiti” means one or more letters, symbols, marks, pictorial representations, messages or slogans howsoever made on any property, but does not include the following:

- (a) a sign, public notice, mural or traffic control mark authorized by the Corporation of the Township of Wilmot or the federal or provincial governments: or,
- (b) a sign authorized pursuant to a permit issued under the Township of Wilmot’s Sign Bylaw; or,
- (c) one or more letters, symbols, marks, pictorial representations, messages or slogans howsoever made on any property, authorized by the owner of the property where sufficient proof is shown to the satisfaction of the officer that the owner caused or authorized placement of same.

“Municipal Law Enforcement Officer” means an individual appointed by the Township of Wilmot pursuant to s.15 of the *Police Services Act, R.S.O. 1990, c.P 15*, as amended;

“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:

“Person” means an individual or group of individuals, unincorporated association, sole proprietorship or corporation;

“Police Officer” means an officer of the Waterloo Regional Police Service: and,

“Property” means land that may have a building (occupied or unoccupied) on it or vacant land.

GRAFFITI PROHIBITED

2. No person shall place graffiti, or cause or permit graffiti to be placed on any property.
3. An owner shall keep the property free of graffiti.

APPLICATION TO INTERIOR SPACE

4. Section 2 does not apply to the interior space of any property.

PENALTY

5. Every person who contravenes any of the provisions of this by-law is guilty of an offence and, on conviction, is liable:
 - (a) On a first conviction, to a fine of not less than \$400.00 and not more than \$100,000.00; and,
 - (b) On a second or subsequent conviction, to a fine of not more than \$10,000.00 for each day or part of a day on which the contravention has continued after the day on which the person was first convicted.

POWERS OF INSPECTION

6. The Township 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 Township 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. For the purposes of conducting an inspection pursuant to s. 6 of this by-law, the Township 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 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 purpose of this inspection.

HINDRANCE OR OBSTRUCTION

8. 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.

ORDER TO DISCONTINUE ACTIVITY

9. Where the Township is satisfied that a contravention of this by-law has occurred, the Township 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.
10. An order under s. 9 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; and,
 - (b) The date by which there must be compliance with the order.
11. Any person who contravenes an order under s. 9 of this by-law is guilty of an offence.

ENFORCEMENT

1. This by-law shall be enforced by a Municipal Law Enforcement Officer and/or the Waterloo Regional Police Service.

WORK ORDER

12. Where the township is satisfied with a contravention of this by-law has occurred, the Township 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.
13. An order under s. 12 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; and,
 - (b) the work to be done and the date by which the work must be done.
14. An order under s. 12 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.
15. Any person who contravenes an order under s. 12 of this by-law is guilty of an offence.

REMEDIAL ACTION

16. 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 Township 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 Township 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.

17. The costs outlined in s. 16 of this by-law shall include interest calculated at a rate of 15 per cent, calculated for the period commencing on the day the Township incurs the costs and ending on the day the costs, including the interest, are paid in full.
18. 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 Township shall register a discharge of the lien in the proper land registry office.

SEVERABILITY

19. 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 or influenced 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.

COMING INTO FORCE

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

SHORT TITLE

21. This by-law may be referred to as the "Graffiti By-Law."

READ a first and second time in Open Council this 26th day of September, 2011.

READ a third time and finally passed in Open Council this 26th day of September, 2011.

Mayor

Clerk

THE CORPORATION OF THE TOWNSHIP OF WILMOT

BY-LAW NO. 2011-35

PART I PROVINCIAL OFFENCES ACT

TITLE: BEING A BY-LAW TO REGULATE GRAFFITI ON PROPERTY IN THE TOWNSHIP OF WILMOT

COLUMN 1		COLUMN 2	COLUMN 3	COLUMN 4
SHORT FORM WORDING		PROVISION CREATING OR DEFINING OFFENCE	SET FINE	
1	Place graffiti on property	2	\$400.00	
2	Cause graffiti to be placed on a property	2	\$400.00	
3	Permit graffiti to be placed on property	2	\$400.00	
4	Fail to keep property free of graffiti	3	\$400.00	
5	Fail to comply with an order to discontinue activity	11	\$400.00	
6	Fail to comply with a work order	15	\$400.00	

Note: the general penalty provision for the offences listed above is Section 5 of By-law 2011-35, a certified copy of which has been filed.