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City of Cape Town: Graffiti By-law, 2010

WHEREAS section 156 (2) of the Constitution of the Republic of South Africa, 1996 provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer;

WHEREAS the City has, in terms of section 156(1) read with Part B of Schedule 5 of the Constitution, the right to administer the control of public nuisances, 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:—

1. Definitions

In this By-law, unless the context indicates otherwise—

"apply" means to paint, including to 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 or the implementation of this By-law or such service provider as has been authorized by the City;

"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 committee, sub-council, employee or agent;

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

"graffiti" means any one of or a combination of any inscription, word, figure other than a 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" includes 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, fence or structure;

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

"offensive content" includes content of any art work which, whether in form, content or both, may reasonably be expected to—

- (a) cause offence or danger to any person or property, or to any member of the public in a manner which is contemplated in section 16(2)(a),(b) and (c) of the Constitution of the Republic of South Africa, 1996; or
- (b) be detrimental or otherwise have a negative impact on the environment;

"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 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;

"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—

- (a) any public land, square, public swimming bath, public resort, public recreation space, zoological, botanical or other public garden, park or hiking trail, including any portion thereof and any facility or apparatus therein or thereon, as well as any public open space, public road, road reserve, reserve street, lake, dam, or

river;

- (b) any public building, structure, hall, room or office including any part thereof and facility or apparatus therein, which is the property of, or possessed, controlled or leased by the City and to which the general public has access, whether on payment of admission fees or not;
- (c) any nature conservation area including —
 - (i) nature reserves;
 - (ii) protected natural areas;
 - (iii) nature conservation worthy areas; or
 - (iv) natural open spaces;

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

"remove" means restore the surface 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; and

"self-permit mechanism" refers to the mechanism referred to in section 10 for an application and approval to effect a self-permit.

2. Declaration of nuisance

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.

3. Prohibition

- (1) No person shall within the area of jurisdiction of the City, without a permit issued by 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.

4. Compliance notice

- (1) The authorised official 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 which shall not be more than 30 days from the date of issuing 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, 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 authorised official may, where he or she 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 the Director: Expenditure in the Directorate of Finance in the City, shall constitute a liquid claim in favour of the City and recoverable in terms of the Credit Control and Debt Collection Policy of the City and the Credit Control and Debt Collection By-law of the City.
- (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.

5. Service of notices

- (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 16 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 14 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.

6. Duty of owner

- (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 graffiti within 10 days of the owner becoming aware of the graffiti on his or her property.

7. Right of entry

- (1) An authorised official may, where—
 - (a) property is not maintained in accordance with section 6; and
 - (b) a compliance notice was served to a person in terms of sections 4 and 5 but such person has failed to comply therewith,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 such owner, or by posting a notice on the property.
- (2) The 15 days' notice served on the owner in terms of subsection (1) must include—
 - (a) the address of the property to which the authorised official intends to enter;
 - (b) the date and time on which the authorised official intends to enter the premises, provided that such entry may be gained only between 08h00 and 18h00 from Monday to Friday; and
 - (c) the reason for the entry and the specific provision of this By-law which has been contravened by the owner.

8. Costs

- (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).

9. Permits for art work and decorations

- (1) Any person who intends applying a mural or 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 authorised official 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, surrounding property owners and any other interested and affected parties.
- (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 authorised official must, on receipt of the application referred to in subsection (2), consult with any affected department of the City or person.
- (5) The City may refuse or grant an application for a permit, and must within 30 days of its decision advise the applicant 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 murals or any inscription, word, figure, letter, sign, symbol, sketch, picture, drawing or design, and these spaces will be identified after consultation with the relevant communities, ward forums and subcouncils.
- (8) A person may apply to utilize a designated space referred to in subsection (7) in writing to the authorised official, and—
 - (a) may be authorised to utilize a designated space for mural art or decorations;
 - (b) must remove the art or decorations after the expiry of a three month period; and
 - (c) may apply for a three month extension of the authorisation.

10. Artist database and self-permitting mechanism

- (1) (a) The authorised official must keep, maintain and update a register of mural artists and other artists within the area of jurisdiction of the City who have been granted approval in terms of paragraph (b).

- (b) A mural artist may be recorded in the register in terms of paragraph (a) upon the submission of an application in a manner or form determined by the authorised official, subject to the artist meeting the following conditions:
 - (i) the artist has obtained approval for at least five consecutive applications submitted by him or her in terms of section 9;
 - (ii) the artist is a registered member of the Visual Arts Network of South Africa (VANSAN); and
 - (iii) the artist has no previous conviction for malicious damage to property or any offence relating to graffiti.
- (2) Mural artists registered as contemplated in subsection (1) may, subject to subsection (3), self-permit their future works of art.
- (3) A mural artist registered in terms of subsection (1) must, for every mural work of art and prior to the creation of such works of art, submit a self-permitting notice to the authorised official—
 - (a) in a manner or form determined by him or her;
 - (b) containing proof of the consent of the owner of the property and adjacent property owners;
 - (b) and accompanied by a sketch or other image of the intended work of art,in order to effect a self-permit.

11. Penalties

- (1) Any person who fails to comply with any provision of this By-Law shall be guilty of an offence. (2) Any person convicted of an offence in terms of this By-law shall—
 - (a) upon conviction for a first offence be liable to a fine of R15 000 or 3 months imprisonment;
 - (b) upon conviction for a second offence or subsequent offences, be liable to a fine R30 000 or 6 months imprisonment, or to both such fine and such imprisonment.
- (3) In addition to a penalty contemplated in subsection (1), the convicted person may 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.

- (4) In the case of a continuing offence, the person convicted shall be liable to any additional penalty the court may deem appropriate. (5) A court convicting a person of an offence under this By-law may impose alternative sentencing as an appropriate penalty.

12. Short title

This By-Law is called the City of Cape Town: Graffiti By-Law, 2010.