

**Subject: Residential Mural One-Year Pilot Program Update and Next Steps**

**File Number: ACS2022-PIE-GEN-0009**

**Report to Planning Committee on 26 May 2022**

**and Council 8 June 2022**

**Submitted on May 9, 2022 by John Buck, Chief Building Official, Building Code Services, Planning, Real Estate and Economic Development Department**

**and**

**Submitted on May 9, 2022 Roger Chapman, Director, By-law and Regulatory Services, Emergency and Protective Services**

**Contact Person: Alexandre LeBlanc, Strategic Programs and Project Officer, Business and Technical Support Service**

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**Ward: Citywide**

**Objet : Mise à jour et prochaines étapes au sujet du Programme pilote de murales résidentielles d'un an**

**Dossier : ACS2022-PIE-GEN-0009**

**Rapport au Comité de l'urbanisme**

**le 26 mai 2022**

**et au Conseil le 8 juin 2022**

**Soumis le 9 mai 2022 par John Buck, Chef du service du bâtiment, Direction générale de la planification, de l'immobilier et du développement économique**

**et**

**Soumis le 9 mai 2022 par Roger Chapman, Directeur des Services des règlements municipaux, Services de protection et d'urgence**

**Personne ressource : Alexandre LeBlanc, Agent, programmes et projets stratégiques, Services de soutien techniques et aux activités**

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Quartier : À l'échelle de la ville

## **REPORT RECOMMENDATIONS**

That Planning Committee recommend Council:

1. Receive the 2021 Residential Mural One-Year Pilot Program Update;
2. Approve the amendments to the Residential Murals By-law, as per Document 1;
  - a) broadening the By-law scope to permit murals in all zones beyond residential;
  - b) renaming the document to the "Ottawa Mural By-law"; and
3. Approve extending the Mural Pilot for an additional year ending May 1, 2023, after which the Ottawa Mural By-law and program would become permanent.

## **RECOMMANDATIONS DU RAPPORT**

Que le Comité de l'urbanisme recommande au Conseil :

1. Prene connaissance de la mise à jour 2021 du Programme pilote de murales résidentielles d'un an;
2. Approuve les modifications au Règlement sur les murales résidentielles, conformément au document 1 afin;
  - a) d'étendre la portée du règlement pour autoriser les murales dans toutes les zones au-delà des zones résidentielles;
  - b) de renommer le document « Règlement régissant les murales d'Ottawa »;
3. Approuve la prolongation d'un an du programme pilote de murales, soit jusqu'au 1<sup>er</sup> mai 2023, après quoi le Règlement régissant les murales d'Ottawa et le programme deviendront permanents.

## BACKGROUND

On November 25, 2020, Council approved the Residential Mural One-Year Pilot Program ([ACS2020-PIE-GEN-0002](#)). The program answered a Council direction which asked staff to review the process for exemptions to the [Permanent Signs on Private Property By-law](#) to allow murals on residential buildings in a residential zone and that this process be as easy as possible for homeowners while still respecting the character of the neighbourhood.

Under the Residential Mural One-Year Pilot, the Residential Mural By-law permits murals in residential zones, provided the application for a permit was granted. The Pilot enabled approved murals in residential zones to no longer be subject to the Permanent Signs on Private Property By-law, instead being governed by the Residential Mural By-law which provided more flexibility. Murals considered under Ottawa's [Paint it Up! program](#) were exempted from the Residential Murals By-law. Ottawa's Paint it Up! program makes funding available for outdoor mural art projects that support graffiti prevention, youth empowerment, community safety and the beautification of Ottawa neighbourhoods.

For residents interested in painting a residential mural, the Council approved process under the Residential Mural One-Year Pilot Program is composed of three following steps:

1. Application for a permit

The applicant is required to submit details including the address where the mural is to be painted, a sketch of the proposed mural, a photo of the proposed location and payment of the \$150 permit fee. The fee provides a measure of cost-recovery for administration and enforcement and ensures a level of seriousness and commitment on the part of residents applying for a permit for such a project. An additional \$50-dollar fee is charged for each additional residential mural at the same municipal address.

2. Processing the Application

The application is coordinated by By-law and Regulatory Services Staff who circulate the application to the Residential Mural Review Panel. The Residential Mural Review Panel is comprised of representatives of the City's Public Art Program Unit, By-law and Regulatory Services, Public Realm and Urban Design Branch, Legal Services, and the Ward Councillor. Each representative on the

Residential Mural Review Panel provides comment within 30 business days from the date of receipt of the application. The Ward Councillor's concurrence is required ahead of the permit being issued.

### 3. Enforcement and Maintenance

In the instance where a mural is painted without a permit, By-law and Regulatory Services would issue a Notice of Violation giving the property owner a choice to remove the mural or submit an application through the proposed Residential Mural By-law.

Maintenance is included as a condition of the issuance of the permit and as a provision of the by-law. Violations could be subject to Notices to comply and potential fines for non-compliance, or the City could arrange for the work to be undertaken at the owner's expense.

At its meeting of April 28, 2021, Council considered a motion to permit a mural on the exterior wall containing the main entrance of the Richmond Public School. Before being carried, a question was raised about whether there could be a broader reaching approach to not overly regulate art in public space outside as long as the owner agrees to it. Staff committed to answer the question in a memo, and on May 03, 2021, Council was provided an update Memorandum ([ACS2021-PIE-GEN-0003](#)) which confirmed that, as the Richmond Public School is in an institutional zone, it fell outside the scope of the Residential Mural By-law and One-Year Pilot Program, and remained within the purview of the Permanent Signs on Private Property By-law.

Staff have considered the comment made at the April 28, 2021 Council meeting concerning the broadening of the murals process while keeping with the original direction to protect neighbourhood character. These considerations form the basis for transforming the Residential Murals By-law into the Ottawa Murals By-law, proposed in Recommendation 2.

## **DISCUSSION**

### **Recommendation 1: Receive an update on the Residential Mural One-Year Pilot Program**

In 2021, the Residential Mural One-Year Pilot Program received six applications, which all received approval for a Residential Mural Permit.

By-law and Regulatory Services had a positive experience processing the applications,

which were all processed within the prescribed timelines. The members of the Residential Mural Review Panel approval committee provided timely and relevant comments. No calls for enforcement from members of the public in relation residential murals were received.

Staff support continuing using the online application, fee and panel review process.

Outside the scope of the one-year pilot program, Council considered two other murals which needed an exemption from the Permanent Signs on Private Property By-law.

The first was an exemption report from Councillor Cloutier to permit a Mural installed above the third storey of [1365 Bank Street](#), which was carried by Council on June 23, 2021. Staff propose amendments to capture this instance as part of the mural process, rather than Council reports in Recommendation 2.

The second was a [motion for the Richmond Public School](#), to permit a mural installed on a wall containing main entrance to building. The motion prompted a conversation during committee about permitting murals more broadly. Staff actioned this request to broaden the public art permissions as proposed in Recommendation 2.

## **Recommendation 2: Broaden the Residential Murals By-law to include all zones**

Staff propose with this recommendation to revise the Residential Murals By-law to include all zones beyond residential, transforming and renaming it to become the “Ottawa Mural By-law” (see Document 2). The proposed changes harmonize the process for residents who would wish to paint a mural on any structure, anywhere in the City:

- Any mention of “residential” is proposed to be removed, instead opening the by-law to apply to all zones.
- Addition of a “City Sponsor” , which is defined as a City department or City funded organization, including but not limited to Crime Prevention Ottawa and Councillors’ Office, that provides a financial contribution towards a mural;
- Murals funded by a City Sponsor would be exempted from the fees under this by-law, as per section 5(3).
- It is also proposed that murals on a backing that is affixed to the building or structure also be permitted under the Ottawa Mural By-law, as they were under the Permanent Signs on Private property By-law.

- The three-storey maximum that limited where murals could be installed or painted is proposed to be removed.

With the proposed changes above, the two 2021 exemptions to the Permanent Signs and Private Property By-law would not have to occur. The Ottawa Mural By-law would contain all the relevant mural provisions from the Permanent Signs and Private Property By-law and expand on those provisions as to enables murals to be considered within the regular mural process rather than Council motions or reports.

### **Recommendation 3: Extending the pilot program for a year and the path to a permanent program**

The mural program is still new, and staff feel they do not have a sufficient data pool to have a clear picture of the level of public interest in the program. To mitigate the possibility of a rise in application and enforcement volumes due to the expansion of the program, Staff propose that the changes proposed in Recommendation 2 be implemented for a year, effectively extending the pilot for an additional year.

Should no issues be identified over the next year, Staff will undertake to make the mural program and the Ottawa Mural By-law permanent by removing the Murals provisions from the Permanent Signs on Private Property By-law 2016-326. Delegated authority for this work had already been granted by Council in the previous report ([ACS2020-PIE-GEN-0002](#)).

Once the mural sections of the Permanent Signs on Private Property are removed, the Ottawa Mural By-law would become the sole authority for murals in Ottawa, under the jurisdiction of By-law and Regulatory Services.

### **ASSET MANAGEMENT IMPLICATIONS**

There are no Asset Management Implications associated with this report.

### **FINANCIAL IMPLICATIONS**

The proposed fees are intended to be cost recoverable.

### **LEGAL IMPLICATIONS**

There are no legal implications associated with implementing the report recommendations.

## **COMMENTS BY THE WARD COUNCILLORS**

This is a City-wide report – not applicable.

## **CONSULTATION**

As part of the Residential Mural One-Year Pilot Program, staff committed to conducting public engagement on the program and to report back as part of this report. With a dedicated web page on [Ottawa.ca](http://Ottawa.ca), residents had the opportunity to fill out a survey to let us know their thoughts on the program.

Over the last year, staff received 7 complete responses. The majority supported the existence of the program, although respondents generally thought the permit process could be more straightforward. A few residents called for the permit process to be abolished completely, in favor of a more permissive approach. Unfortunately, this proposal would not meet the original intent of the Direction to Staff, which asked staff to make the process “as easy as possible for homeowners while still respecting the character of the neighbourhood”.

Residents asked for more clarification on rules and permitted locations, which is addressed by Recommendation 2 above, which broadens the scope of the By-law to include all zones, not just residential. Additionally, it is proposed that each year, pictures of the murals will be uploaded to the website.

## **ACCESSIBILITY IMPACTS**

There are no accessibility impacts.

## **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with the recommendations in this report.

## **RURAL IMPLICATIONS**

Murals will be permitted in Rural Areas, in all zones.

## **TERM OF COUNCIL PRIORITIES**

This project addresses the following Term of Council Priority:

- Thriving Communities: Promote safety, culture, social and physical well-being for our residents.

## **SUPPORTING DOCUMENTATION**

Document 1 Draft Ottawa Mural By-law

## **DISPOSITION**

By-law and Regulatory Services, Legal Services and any other relevant branches/departments to process the by-law for enactment and to implement the changes to the Ottawa Mural By-law and Permanent Signs on Private Property By-law.

By-law and Regulatory Services will continue to operate the Mural Pilot Program and the Ottawa Mural By-law.



## **Document 1 – By-law No. 2020 -**

A by-law of the City of Ottawa respecting murals.

The Council of the City of Ottawa enacts as follows:

### **DEFINITIONS**

1. In this by-law:

“alter” means the act of changing a mural but does not include maintenance or a change in its general message, and “altered” and “altering” have a corresponding meaning;

“City Sponsor” is a City department or City funded organization, including but not limited to Crime Prevention Ottawa and Councillors’ Office, that provides a financial contribution towards a mural;

“Director” means the Director of By-law and Regulatory Services in the Emergency and Protective Services Department of the City of Ottawa, or an authorized representative;

“Permanent Signs on Private Property By-law” means the City of Ottawa Permanent Signs on Private Property By-law, being By-law No. 2016-326 entitled “A by-law of the City of Ottawa regulating permanent signs on private property and to repeal By-law 2005-439”, as amended, or any successor by-law thereto.

“person” means an individual, a corporation, a partnership, and an association, and includes a property owner, an applicant for a permit or a holder of a permit issued under this by-law as the context requires;

“mural” means a large-scale artwork painted or applied directly on the wall of a structure, or on a backing that is affixed to a building or structure, with the permission of the property owner, that:

- a) aims to beautify and enhance the community with images that reflect and depict culture, history or visions of artistic expression in a tasteful and positive manner;
- b) shall not discriminate, nor incite any other person to infringe anyone’s human rights on the basis of race, ancestry, place of origin, colour, ethnic origin,

- citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, or disability;
- c) excludes tags, acronyms, registered trademarks, commercial advertising, solicitation or public information; and,
  - d) may, in a space up to 10% of the total mural area, include an acknowledgement recognizing the sponsor, provided that such acknowledgement does not exceed an area of 1 square meter and that it is located at a bottom corner of the mural;

“Zoning By-law” means the City of Ottawa Zoning By-law, being By-law No. 2008-250 entitled “City of Ottawa Zoning By-law regulating the use of all land and the density, size, location and use of all buildings within the City of Ottawa”, as amended, or any successor by-law thereto.

## **INTERPRETATION**

- 2. (1) Where a situation arises that is not covered by a specific regulation, or where two or more regulations are equally applicable, all provisions shall be complied with or, where it is not possible to comply with all the applicable provisions, the most restrictive provisions shall prevail.
- (2) Unless otherwise defined, the words and phrases used in this by-law have their normal and ordinary meaning.
- (3) This by-law includes the Schedules annexed hereto and the Schedules are hereby declared to form part of this by-law.
- (4) This by-law is gender-neutral and, accordingly, any reference to one gender includes the other.
- (5) References to items in the plural include the singular, as applicable, unless used with a number modifying the term.
- (6) The headings used in this by-law are inserted for convenience of reference only, form no part of this by-law and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
- (7) It is declared that if any section, Subsection or part thereof be declared by any Court of Law to be bad, illegal or ultra vires, such section, Subsection

part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

## **ADMINISTRATION**

3. The Director is authorized to administer and enforce the provisions of this by-law.
4. Reserved for future use.

## **EXEMPTION**

5. (1) Murals that existed prior to the date of enactment of this by-law and were authorized by the City under the Permanent Signs on Private Property By-law or Paint it Up! program are exempt from the permit requirement.
- (2) The onus of proof of the month and year of the painting or application of the mural is on the property owner.
- (3) Murals funded by a City Sponsor are exempted from the fees under this by-law.

## **PERMIT**

1. No person shall paint, apply or maintain, or cause the painting, application or maintenance of any mural without first obtaining a permit in accordance with this by-law.

## **PERMIT APPLICATION**

2. Every applicant for a mural permit shall complete and submit to the Director an application, which shall:
  - (a) be in the form required by the Director and include but not be limited to:
    - (i) the name, address, telephone number and e-mail address of the applicant;
    - (ii) the name, address, telephone number and e-mail address of the owner of the property on which the mural is to be placed, if the applicant is not the property owner;

- (iii) written permission from the property owner, if not the applicant, that the application may be submitted and, if approved, that the mural may be placed on the property;
  - (b) where applicable, include plans, drawings, specifications, documents and any other information required by the Director at the applicant's own expense; and,
  - (c) be accompanied by:
    - (i) the fee set out in Schedule A of this by-law; or
    - (ii) a contract from a City sponsor;
- 3. (1) The application for a mural permit shall be circulated to the Mural Review Panel comprised of:
  - (a) a representative from each of:
    - (i) By-law and Regulatory Services;
    - (ii) Heritage and Urban Design Branch;
    - (iii) Legal Services;
    - (iv) Public Art Program Unit;(b)the relevant Ward Councillor; and,
  - (2) (a) Each representative on the Mural Review Panel shall provide comment within thirty (30) business days from the date of receipt of the application.
    - (b) If after the thirty (30) day period no comment has been provided by any representative of the Panel, concurrence with the mural permit application shall be deemed provided by that representative.
  - (3) Subsection (2) shall not apply to the Ward Councillor whose approval shall be required as a condition of issuance of the mural permit.
- 4. (1) The Director shall issue the mural permit unless:
  - (a) the mural contravenes this by-law or any other applicable law;

- (b) the permit application, including plans, drawings, specifications, documents or other information required by the Director, is incomplete;
    - (c) any fees required under this by-law are unpaid; or,
    - (d) the Mural Review Panel has not approved the application.
  - (2) The Director may, at his discretion, require the applicant to submit such additional plans, drawings, specifications, documents or other information that may be deemed necessary to determine whether a permit may be issued.
10. The Plans, Specifications, documents and other information submitted with an application under this by-law are the property of the City and, upon the permit being issued, are considered public information, subject to the *Municipal Freedom of Information and Protection of Privacy Act*.
  11. Every permit holder agrees to indemnify and save harmless the City of Ottawa, its employees and agents from any and all claims, demands, causes or action costs or damages howsoever caused that the City may suffer, incur or be liable for resulting from the issuance of a permit under this by-law or from the performance or nonperformance of the respective permit holder under this by-law whether or not such performance or non-performance arises with or without negligence on the part of the permit holder, its employees, directors or agents.
  12. The Director may, at his discretion, impose any terms, conditions or restrictions on a permit issued under this by-law.
  13. No person shall fail to comply with any term, condition or restriction of a permit issued under this by-law.

#### **PERMIT APPLICATION AND PERMIT LAPSES**

14.
  - (1) An application for a permit lapses six (6) months after the date of filing unless the application is being actively pursued by the applicant or a permit has been issued.
  - (2) Subsection (1) does not apply to a delay caused by the City in processing the application.

- (3) Where an application for a permit lapses under Subsection (1), the application fee is not refundable.
- (4) Where a permit has been issued, the permit holder shall complete the mural within twelve (12) months of the date of issuance.

### **REVOCATION OF A PERMIT**

15. (1) The Director shall revoke a permit issued under this by-law where:
  - (a) the permit was issued in error;
  - (b) the permit was issued based on false, misleading or incorrect information;
  - (c) the permit holder requests in writing that the permit be revoked;
  - (d) the permit holder has breached this by-law;
  - (e) the permit holder does not comply with conditions imposed from a minor variance approval; or,
  - (f) the permit holder does not complete the mural in accordance with Section 14(4).
- (2) The Director shall notify the permit holder, in writing, of the revocation of the permit.

### **WORK COMMENCED WITHOUT PERMIT**

16. Where work to erect a mural is commenced prior to the issuance of a permit authorizing the mural, an additional administrative surcharge of 50% of the permit fee set out in Schedule A of this by-law may be required as a condition to the permit being issued.

### **REFUNDS**

17. (1) An applicant may withdraw an application for a mural permit at any time prior to the issuance of the permit.
- (2) Where an applicant withdraws an application under Subsection (1), the applicant may be entitled to a refund as follows:

- (a) 75% of the application fee if a request for a refund is received by the Director prior to the start of the review of the application; or,
  - (b) 50% of the application fee if a request for a refund is received once the review has commenced.
18. Where a permit has been revoked under this by-law, the application fee is not refundable.

## **PROHIBITIONS**

19. A mural that is not permitted under this by-law is prohibited.
20. No person shall paint, apply or maintain, or cause the painting, application or maintenance of any mural that is prohibited under this by-law.
21. Without limiting the generality of Sections 19 and 20, no person shall paint, apply or maintain, or cause the painting, application or maintenance of any mural that:
- (a) contains tags, acronyms, registered trademarks, commercial advertising, solicitation or public information of any kind;
  - (b) is illuminated, animated or operated in such a way that it constitutes a hazardous distraction for vehicular or pedestrian traffic;
  - (c) imitates, resembles or could reasonably be mistaken for an official sign;
  - (d) has more than 10% of the total mural area used as an acknowledgement recognizing the sponsor or has an acknowledgement that exceeds an area of 1 square meter, and is not located at a bottom corner of the mural;
  - (g) exceeds a maximum sign face area equal to 100% of the exterior wall area on which the mural is located.
22. (1) No person shall paint, apply or maintain, or cause the painting, application or maintenance of a mural directly to brick, wood or stone of a building or structure that is designated under Part IV or Part V of the *Ontario Heritage Act* or listed on the City's Heritage Reference List.
- (2) A mural can be painted on or applied to a surface such as plywood or canvas that is attached to the wall of a building or structure designated

under Part IV or Part V of the *Ontario Heritage Act* or listed on the City's Heritage Reference List and, where applicable, can be fastened into the mortar joints and not through the brick or masonry itself.

- (3) Despite Subsection (1), a mural may be permitted if the records of the City's Heritage Services indicate that the building or structure had been painted prior to the designation or listing of the building or structure.
23. No person shall paint, apply or maintain, or cause the painting, application or maintenance of any mural that is not as specified in the application for the permit.
24. No person shall alter, or cause to be altered, a mural once the permit application has been approved or once the mural has been placed, unless approved by the Mural Review Panel as defined in Section 8 of this by-law.
25. No permit holder shall fail to produce the permit for inspection upon the request of the Director.

#### **MAINTENANCE OF MURALS**

26. Every person shall ensure that the mural complies with all applicable municipal by-laws, and provincial and federal laws and regulations.
27. No person shall fail to ensure that the mural is maintained so as to:
  - (a) be in good condition and state of repair;
  - (b) not appear unsightly;
  - (c) not present a public safety risk; and
  - (d) not become structurally unsound.

#### **NOTICE OF VIOLATION**

28. (1) Where a mural is not painted, applied or maintained pursuant to the provisions of this by-law, the Director may issue a Notice of Violation, by registered mail or direct delivery by hand to the permit holder's or property owner's last known address, requiring the permit holder or property owner to remove the mural or bring the mural into conformity with the requirements of this by-law and within the time specified in the Notice.



- (2) A Notice of Violation issued by registered mail pursuant to Subsection (1) is deemed to have been served upon the recipient on the third day follow the date of mailing.
  - (3) No person shall fail to comply with a Notice issued pursuant to Subsection (1).
29. (1) Where a Notice has been issued by the Director pursuant to Section 28, and the requirements of the Notice have not been complied with, the City may cause the work to be done and the cost of the work shall be at the expense of the property owner.
- (2) The costs of the work to be done pursuant to Subsection (1) may be recovered from the property owner by action or by adding the costs to the tax roll and collecting them in the same manner as taxes.

## **OFFENCES AND PENALTIES**

30. Every person who contravenes any of the provisions of this by-law is guilty of an offence.
31. (1) Every person who is convicted of an offence under this by-law is liable to a minimum fine not exceeding \$500 and to a maximum fine not exceeding \$100,000, pursuant to Subsections 429(1) and (3) of *the Municipal Act, 2001*.
- (2) A person who is convicted of an offence under this by-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000, and the total of all daily fines for the offence is not limited to \$100,000 as provided for in Subsection 429(3), paragraph 2, of the *Municipal Act, 2001*.
32. When a person has been convicted of an offence under this by-law,
- (a) the Ontario Court of Justice, or
  - (b) any court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, make an order prohibiting the continuation or repetition of the offence by the person convicted.

**EFFECTIVE DATE**

33. This by-law shall come into force and take effect on July 01, 2022.

**SHORT TITLE**

34. This by-law may be referred to as the "Ottawa Mural By-law".

ENACTED AND PASSED this \_\_\_ day of \_\_\_\_\_, 2020.

CITY CLERK

MAYOR

**Schedule A**

**Mural Permit Fees**

For each mural at a municipal address	\$150
For each additional mural at the same municipal address	\$50