

By-law No. 2020 -

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

The Council of the City of Ottawa enacts as follows:

DEFINITIONS

1. In this by-law:

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

“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;

- a) “residential mural” means a large-scale artwork painted or applied directly on the wall of structures in a residential zone, with the permission of the property owner, that:
- b) 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;
- c) 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;
- d) excludes tags, acronyms, registered trademarks, commercial advertising, solicitation or public information; and,
- e) 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;

“residential zone”, for the purposes of this by-law, includes the Residential (R1 to R5), Rural Residential (RR), Mobile Home (RM), and Village Residential (V1 to V3) zones as set out in the Zoning By-law;

“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. (1) Any mural that is not a residential mural as defined under this by-law is subject to the provisions of the Permanent Signs on Private Property By-law.
(2) The provisions of the Permanent Signs on Private Property By-law do not apply to murals in residential zones as defined and regulated under this by-law.

EXEMPTION

5. (1) Murals in residential zones 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 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.

PERMIT

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

PERMIT APPLICATION

7. Every applicant for a residential 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 residential 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 the fee set out in Schedule A of this by-law.
- 8. (1) The application for a residential mural permit shall be circulated to the Residential 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 Residential 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 residential 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 residential mural permit.
- 9. (1) The Director shall issue the residential mural permit unless:
 - (a) the residential 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 Residential Murals 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 non performance 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 residential mural within twelve (12) months of the date of issuance.

REVOCACTION 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 residential 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 residential 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 shall be paid prior to the permit being issued.

REFUNDS

17. (1) An applicant may withdraw an application for a residential 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 residential 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 residential 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 residential 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;
 - (e) has three-dimensional elements;
 - (f) requires mounting; or,
 - (g) exceeds a maximum sign face area equal to 100% of the exterior wall area of the first three storeys on which the residential mural is located.
22. (1) No person shall paint, apply or maintain, or cause the painting, application or maintenance of a residential 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) Despite Subsection (1), a residential 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 residential mural that is not as specified in the application for the permit.

24. No person shall alter, or cause to be altered, a residential mural once the permit application has been approved or once the mural has been placed, unless approved by the Residential 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 RESIDENTIAL MURALS

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

NOTICE OF VIOLATION

28. (1) Where a residential 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 May 1, 2021.

SHORT TITLE

34. This by-law may be referred to as the “Residential Mural By-law”.

ENACTED AND PASSED this day of , 2020.

CITY CLERK

MAYOR

Schedule A

Residential Mural Permit Fees

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