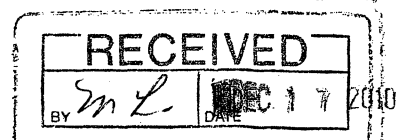




**A By-Law Providing for the Control of Graffiti  
Within the Tk'emlúps te Secwépemc**

By-law Number 2010-02  
Approved by Chief and Council the 30<sup>th</sup> day of November, 2010



**A By-law Providing for the Control of Graffiti  
Within the Tk'emlúps te Secwépemc**

Tk'emlúps te Secwépemc  
By-law No. 2010-02

**WHEREAS** section 35 of the Constitution Act, 1982 recognizes and affirms the existing aboriginal (self-government) and treaty rights of the aboriginal peoples of Canada;

**WHEREAS** Paragraphs 81(1) (c), (d), (h) (p.1), (q) and (r) of the Indian Act empowers the Council of the Tk'emlúps te Secwépemc to enact by-laws respecting the regulation of, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and to impose a penalty for the violation of a by-law made under section 81;

**AND WHEREAS** the Council of the Tk'emlúps te Secwépemc is of the opinion that this By-law is necessary to prohibit and impose requirements in relation to the protection and enhancement of the well-being of the community, specifically in relation to graffiti to:

- a. preserve and enhance the character of the Tk'emlúps te Secwépemc community's aesthetic environment;
- b. promote a well-maintained and attractive community; and,
- c. prevent and to promote public responsibilities by requiring that the property owners and occupiers remove graffiti.

**AND WHEREAS** the Council of the Tk'emlúps te Secwépemc did enact By-law No. 2010-01 on the 2<sup>nd</sup> day of March, 2010, and wishes to repeal the said By-law No. 2010-01 and replace it with this by-law;

**NOW THEREFORE**, the Council of the Tk'emlúps te Secwépemc enacts as a by-law thereof as follows:

Short Title

1. This by-law may be cited as the "Tk'emlúps te Secwépemc Graffiti By-law".

**2. Definitions and interpretations**

2.1 In this by-law,

**"Graffiti"** means any drawing, mural, printing or writing which is scribbled, scratched, sprayed, painted, or similarly placed directly on any surface by means of permanent paint, ink or other substance or by chisel, hammer, stone or other device, but does not include:

- a. signs, notices, and traffic control devices authorized by any provincial or federal legislation,
- b. murals or other forms of expressions pre-approved by the Chief Executive Officer in accordance with the Tk'emlúps te Secwépemc Guidelines as set out Appendix A.

**"Officer"** means any police officer, a By-law Enforcement Officer or any other person appointed by the Tk'emlúps te Secwépemc Administration for the purpose of maintaining law and order on the reserve;

**"Property"** means any building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all 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;

**"Public place"** means every park, bridge, courtyard, square, walkway, building, parkade and any other area or structure open to public use and includes every right-of-way reserved for use by a railway;

**"Reserve"** means the tract of land, the legal title of which is for the use and benefit of the Tk'emlúps te Secwépemc;

**"Tk'emlúps te Secwépemc"** means for the purposes of this By-law is aka the Kamloops Indian Band.

### **3. General Prohibitions**

- 3.1 No person shall place graffiti on a building, structure, wall, fence, or any other surface that is visible from a public place.
- 3.2 No property owner or occupier shall permit graffiti to be placed on a building, structure, wall, fence, or other surface located on that real property, if such graffiti is visible from a public place.
- 3.3 Every property owner or occupier must cover or remove from that real property any graffiti present on a building, structure, wall, fence or any other surface that is visible from a public place.

### **4. Inspection and Enforcement**

- 4.1 The Tk'emlúps te Secwépemc may give written notice by its Bylaw Officer, to a property owner or occupier stating that the Tk'emlúps te Secwépemc will take the action at the expense of the business property owner or occupier if that person does not comply with Section 3.3 within 14 days of the service of the notice.

- 4.2 Where a property owner or occupier fails to comply with the notice issued by the Council under Section 4.1, the Tk'emlúps te Secwépemc by its Bylaw Officer, or its designate, at reasonable times and in a reasonable manner, may enter on the real property and, at the cost of the property owner or occupier, effect such work as is deemed necessary and appropriate by the Tk'emlúps te Secwépemc by its Bylaw Officer, or its designate, to take the action required by the notice.
- 4.3 If the Tk'emlúps te Secwépemc takes action under s. 4.2 and the costs of the action are not paid on or before December 31<sup>st</sup> in the year in which they were incurred:
- a. they may be recovered from the property owner or occupier, as a debt; or;
  - b. they may be collected in the same manner on which the action was taken, and the purposes of this subsection, the costs are considered to be taxes in arrears.
- 4.4 Inspectors and/or its designate (ie. the Graffiti Task Force) are authorized to enter at all reasonable times and in a reasonable manner on real property to determine whether the requirements of this by-law are being observed.

## **5. Penalty**

- 5.1 Every person who violates any of the provisions of this by-law, or permits any act or anything to be done in contravention of this by-law, or who fails to do any act or thing required by this by-law, shall be deemed to have committed an offence against and is guilty of an offence against this by-law and shall be liable to:
- a. a fine of up to \$1,000 or to imprisonment for a term of 30 days, or to both a fine and imprisonment, or;
  - b. restorative justice circle sentencing procedure.
- 5.2 Any penalty imposed pursuant to this by-law shall be in addition to any cost recovery under section 4.3.
- 5.3 This By-law comes into force 40 days after the date of mailing to the Minister of Indian Affairs and Northern Development as required pursuant to section 82 of the Indian Act.

DATES OF ADOPTION

READ A FIRST TIME the 2<sup>nd</sup> day of November, 2010.

READ A SECOND TIME the 16<sup>th</sup> day of November, 2010.

READ A THIRD TIME the 30<sup>th</sup> day of November, 2010.

This by-law is hereby passed at a duly convened meeting of the Council of the Tk'emlúps te Secwépemc the 30<sup>th</sup> day of November, 2010.

Voting in favour of this by-law are the following members of the Council:

Chief

*acting D. Paul*  
Member of Council

Member of Council

*[Signature]*  
Member of Council

Member of Council

*[Signature]*  
Member of Council

Member of Council

*[Signature]*  
Member of Council

Member of Council

Being the majority of those members of the Council of the Tk'emlúps te Secwépemc present. There are eight (8) Council members and a quorum of Council is five (5) members.

Number of members of the Council present at the meeting: 5.

I, Dolan Paul Chief/Councillor of the Tk'emlúps te Secwépemc, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development at the District/Regional/Hull office (as the case may be) pursuant to subsection 82(1) of the Indian Act, this 30<sup>th</sup> day of November, 2010.

*[Signature]*  
Chief/Councillor

*[Signature]*  
Witness



## Appendix A

### Guidelines for Pre-approved Murals or other forms of art expression.

#### MURAL APPROVAL POLICY

##### 1. DEFINITIONS

In this Mural Policy:

**“Council”** means the Council of the Tk'emlúps te Secwépemc , as defined in the *Indian Act*, or any successor to such council of the Band pursuant to a federal Statute or otherwise;

**“Mural”** means any painting, drawing, sketching, or other marking that is inscribed, painted, or otherwise applied directly upon any building, structure, wall, fence, or any other surface, and that does not include any advertising content or logo;

**“Public Place”** includes every sidewalk, park, courtyard, square, walkway, building, and any other area or structure open to public use and includes every right-of-way reserved for use by a railway;

**“Reserve”** means lands which have been set aside by Her Majesty for the use and benefit of the Tk'emlúps te Secwépemc and/or land in relation to which the Band has the jurisdiction to pass by-laws;

**“Submission”** means an application for approval of a Mural, together with all documents and information required under this Mural Approval Policy.

##### 2. SUBMISSSIONS FOR APPROVAL OF MURALS

- 2.1 A person wishing to apply a Mural to any surface that is visible from a Public Place anywhere within the boundaries of the Reserve must make application to the Planning and Engineering Department for approval from the Tk'emlúps te Secwépemc Mural Committee.

### **3. TK'EMLUPS TE SECWÉPEMC MURAL COMMITTEE**

3.1 The Tk'emlúps te Secwépemc Mural Committee will be comprised of the following:

- a. The Manager of the Cultural Resource Management Department or designated alternate;
- b. The Manager of the Lands Leasing and Taxation Department or designated alternate; and
- c. The Manager of the Planning and Engineering Department or designated alternate.

3.2 The Tk'emlúps te Secwépemc Mural Committee will be responsible for evaluating Mural Submissions and making recommendations to Council.

### **4. MURAL APPROVAL PROCESS**

4.1 The Tk'emlúps te Secwépemc Mural Committee will evaluate only those Mural Submissions which include the following documentation:

- a. a completed application, in the form of appendix "B";
- b. written permission from the owner of the property upon which the proposed Mural is to be applied;
- c. a projected timeline for completion of the Mural;
- d. a copy of the contract, if any, between the applicant and the artist(s) installing the Mural;
- e. an itemized inventory of materials to be used for the Mural and a photograph of existing surface on which the Mural will be applied;
- f. a detailed model of the proposed Mural; and
- g. a maintenance plan, including parties responsible for maintenance.

- 4.2 The Tk'emlúps te Secwépemc Mural Committee will evaluate Mural projects on the following criteria:
- a. Artistic merit;
  - b. Tk'emlúps te Secwépemc content;
  - c. Appropriateness of materials; and
  - d. Qualifications of the project manager or lead artist(s).
- 4.3 The Tk'emlúps te Secwépemc Mural Committee will meet a minimum two times between February and June of every year to evaluate Mural Submissions. The Tk'emlúps te Secwépemc Mural Committee will forward its recommendations in respect of each Mural Submission to Council;
- 4.4 All decisions of Council are final; however, applicants may modify their proposed Murals and reapply to the Tk'emlúps te Secwépemc Mural Committee.



**Appendix B**  
**Mural Application Form**

1. Date: \_\_\_\_\_

2. Proposed Site of Mural (legal address): \_\_\_\_\_

3. Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Prov.: \_\_\_\_\_ Postal Code: \_\_\_\_\_

4. Name of other individuals/groups involved in Mural participation/design/implications:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_, as the mural applicant, accept the decision of Council for a mural.

Signature \_\_\_\_\_