

**EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE**

Citation: P. J. v Community Standards (City of Edmonton), 2023 ABECSLAC 10006

Date:	May 30, 2023
Reference Number:	469097580-001
CSLAC File Number:	CSLAC-23-006

Between:

P. J.

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Joel McDonald
Karen Munro

DECISION

- [1] On May 16, 2023, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an Order that was filed on April 27, 2023. The request for review concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 545(1) of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”). The Order was dated April 18, 2023, was mailed on April 20, 2023 and required the following action:

**Remove all GRAFFITI displayed on the building and/or structure that
is visible from any surrounding property.**

YOU MUST COMPLY WITH THIS ORDER BEFORE: May 14, 2023

- [2] The appeal hearing on May 16, 2023 was held through a combination of in-person and video conference hearing. The following documents were received prior to the hearing and form part of the record:

- Copy of the Order issued pursuant to the *Municipal Government Act*;
- The Applicant's written request for review; and
- The Respondent's written submission, including a series of photographs.

Preliminary Matters

- [3] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Applicant, P. J.

- [4] The Applicant sent an email and additional written communications to the Committee, the most recent advising he would not be attending the hearing today. In these documents, the Applicant gave the following reasons for his request that the Order be rescinded.
- a) The Order is not specific enough and does not describe the exact location of the graffiti.
 - b) The compliance date for the Order is unrealistic as the weather in Edmonton is typically not warm enough to apply paint outdoors during the allowable compliance period.
 - c) He objects to an Order being issued without any prior warning. The Applicant has owned this property for over twenty years during which time it has been plagued with graffiti along the fence. He has always diligently removed it without the need for an order.
 - d) The Applicant takes offence at the Bylaw Officer's decision to issue an Order before determining if it was enforceable, particularly for failing to determine if the owner had given consent to the alleged graffiti.

ii) Position of the Respondent, C. Perizzolo

- [5] C. Perizzolo, Acting Coordinator, Complaints and Investigations, did not attend the hearing. She provided a written submission and photographs taken on April 17, 2023.
- [6] The following timeline of events was provided:

- April 17, 2023: A citizen's complaint was received resulting in an inspection of the property by a Bylaw Officer.
- April 18, 2023: Due to the offensive nature of the graffiti a 545 MGA Order was issued and subsequently mailed out on April 20, 2023, forgoing the two week warning notice.
- April 27, 2023: An appeal was received and enforcement action was suspended pending the outcome of this hearing.
- May 2, 2023: The Bylaw Supervisor contacted P. J. to explain why they proceeded directly with an MGA order and provided information regarding the \$750 Professional Cleaning Grant offered by Capital City Clean Up.
- May 12, 2023: An inspection found that the Order had been complied with.

[7] Section 9 of the *Community Standards Bylaw 14600* states:

(1) A person shall not cause or permit a nuisance to exist in respect of any building or structure on land they own or occupy.

(2) For the purpose of greater certainty a nuisance, in respect of a building or structure, means a building or structure, or any portion thereof, showing signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:

(a.1) any graffiti displayed on the building or structure that is visible from any surrounding property;

[8] Section 545(1) of the *Municipal Government Act* states:

If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

[9] Based on evidence provided to the Committee, Administration is satisfied that the Applicant has contravened Section 9(2)(a.1) of the *Community Standards Bylaw* nuisance on land and is asking that the 545 Order (469097580-001) issued on April 18, 2023 be upheld.

Decision

[10] The Order is confirmed.

Reasons for Decision

[11] This review involves an Order issued to the Applicant by the City pursuant to section 545(1) of the *Municipal Government Act* (“MGA”) which states:

If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

[12] Under section 547 of the *MGA*, this Committee may confirm, vary, substitute or cancel orders issued under the authority of section 545.

[13] The Order alleges the existence of a contravention of the *Community Standards Bylaw 14600* (the “Bylaw”) quoting section 9(1) and orders the removal of all GRAFFITI displayed on the building and/or structure that is visible from any surrounding property before May 14, 2023.

[14] Section 9 of the *Bylaw* states in part:

(1) A person shall not cause or permit a nuisance to exist in respect of any building or structure on land they own or occupy.

(2) For the purpose of greater certainty a nuisance, in respect of a building or structure, means a building or structure, or any portion thereof, showing signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:

...

(a.1) any graffiti displayed on the building or structure that is visible from any surrounding property;

...

[15] Graffiti is defined in section 4(a.1) of the *Bylaw*. Graffiti means:

words, letters, symbols, marks, figures, drawings, inscriptions, writings, or stickers that are applied, etched, sprayed, painted, drawn, stained,

scribbled, or scratched on a surface without the consent of the owner, and for greater certainty does not include anything authorized by law.

- [16] Based on all of the written submissions and images before it, the Committee finds that the words and image in black paint along the fence of the subject property shown in the submitted photos taken on April 17, 2023 fall within the definition of Graffiti in section 4(a.1) and constitute a contravention of section 9 of the *Bylaw*. The Committee notes that while the Appellant objected to failure to ask if he consented, his submissions are clear that he did not authorize the words and images on the fence and that he agreed that the material must be removed.
- [17] Based on all of the submissions before it, the Committee also finds:
- i) The subject property was inspected on April 17, 2023 in response to a citizen complaint concerning graffiti.
 - ii) On April 17, 2023 the black spray painted words and the image shown in the photos submitted by the Respondent were present on a fence on the property facing toward the surrounding area.
 - iii) The Order under review was issued the very next day (April 18, 2023) before any other means to resolve the matter were attempted.
 - iv) Specifically, no attempt was made to contact the Applicant or discuss the matter with him prior to the issuance of the Order under review.
 - v) The parties agree the black spray paint words and images are offensive.
 - vi) As of May 12, 2023 the Graffiti had been removed and the property was in compliance with the Order.
- [18] The Committee considered each of the Applicant's grounds of objection, but was not convinced that the Order should be canceled pursuant to its authority under section 547 of the *MGA*. The Committee concluded that the Order was validly issued for the reasons which follow.
- [19] The Applicant objected to the Order being issued without any prior warning. The Committee accepts the Applicant's submission that he has owned this property for over twenty years during which time it has been plagued with graffiti along the fence. He has always diligently removed it without the need for an Order. There was no evidence before the Committee that the property has been the subject of prior enforcement issues or prior Orders.

- [20] The Committee took note that the City's practice previously described to the Committee in many prior cases is generally to first contact the person responsible and then to escalate the response if the matter is not resolved voluntarily. An escalating approach was not followed in this instance.
- [21] The Committee agrees with the Applicant that the abrupt process followed by the Bylaw Officer was not optimal and that a discussion prior to the issuance of the Order may well have effectively resolved the matter without any need for further action.
- [22] However, the Committee also recognizes that the City Manager and delegates have discretion about how they proceed in these cases. The words and images fit within the definition of Graffiti and a Nuisance on land in contravention of the *Bylaw* and there is no requirement for City officials to make contact with the owner prior to issuance of an Order once a contravention has been found to exist. Therefore, the Committee declines to cancel this Order because of a failure to consult with the Applicant prior to the issuance of the Order.
- [23] This same reasoning applies to the fact that the Bylaw Officer failed to specifically inquire about whether the Applicant had consented to the black painted words and images on the fence. Also, in this case, the Applicant specifically mentioned that he would not have given consent and has subsequently removed the Graffiti.
- [24] The Applicant argued that the Order is not specific enough and does not describe the exact location of the Graffiti. The Committee agrees that the Order could have been written using more specific information. However in this case, based on the use of the word Graffiti, the submitted photos and the parties' submissions, it is clear that the Applicant was aware of the parameters of the Order and the steps needed for compliance. Indeed he had successfully complied with the Order by May 12, 2023 based on evidence.
- [25] Further, in a case where a particular order is vague, but the evidence before the Committee demonstrates that conditions on the subject property clearly contravene the *Bylaw*, it would be more appropriate to substitute a clarified Order rather than to cancel the Order entirely.
- [26] The Applicant also argued that the Order should be canceled as the compliance date was unrealistic because the weather in Edmonton is typically not warm enough to apply paint outdoors during the allowable compliance period.
- [27] Based on the facts of this case, the Committee finds the time for compliance stated in the Order was in this instance reasonable and declines to cancel the Order based on the timeline for compliance:

- 1) The Order was mailed on April 20, 2023.

- 2) Allowing 7 days for delivery following the *Interpretation Act* (Section 23(1)(a)), the Order would have been received by the Applicant on April 27, 2023. The Applicant did in fact appeal by email on April 27, 2023. This left 17 days to cover the paint on the fence.
- 3) The parties spoke directly about the Graffiti and enforcement of the Order on May 2, 2023. This left 12 days to cover the paint on the fence.
- 4) In fact the weather was warm enough and the Graffiti had been addressed by May 12, 2023, two days prior to the compliance date.

[28] In the Committee's opinion, had the weather not been warm enough to facilitate compliance, then a more appropriate remedy, given the facts of this case, might have been to vary the Order to add additional opportunity for compliance rather than to cancel the Order entirely.

[29] For all of the above reasons, the Committee confirms the Order.

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

Important Information for the Applicant

1. A person affected by this decision may appeal to the Alberta Court of King's Bench under Section 548 of the *Municipal Government Act*, RSA 2000, c M-26 if the procedure required to be followed by this Act is not followed, or the decision is patently unreasonable.