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| <p><b>Cabinet</b></p> <p>27 February 2019</p>                             |  |
| <p><b>Report of: Ann Sutcliffe – Acting Corporate Director, Place</b></p> | <p><b>Classification:</b><br/>Unrestricted</p>                                      |
| <p><b>Tower Hamlets Graffiti and Street Art Policy</b></p>                |   |

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| <b>Lead Member</b>                   | <b>Councillor David Edgar, Cabinet Member for Environment</b>   |
| <b>Originating Officer(s)</b>        | Dan Jones, Divisional Director Public Realm<br>Richard Williams, Business Manager, Operational Services |
| <b>Wards affected</b>                | All wards   |
| <b>Key Decision?</b>                 | Yes   |
| <b>Forward Plan Notice Published</b> | 29 January 2019   |
| <b>Reason for Key Decision</b>       | Impact on Wards   |
| <b>Strategic Plan Theme</b>          | <b>A borough that our residents are proud of and love to live in</b>                                    |

### **Executive Summary**

This report presents the council's Graffiti and Street Art Policy. It sets out our approach for an increased focus on removing illegal, antisocial and offensive graffiti whilst leaving approved street art in place. Tackling graffiti is a growing problem across the borough with an urgent need to reduce the negative impact it has on local areas and quality of life for residents and businesses.

Linked to this policy are plans to increase resources to tackle unwelcome, antisocial and offensive graffiti. This will allow graffiti enforcement and removal resources to focus on where they are needed, to improve local environmental quality, help reduce fear of crime and increase resident satisfaction.

### **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Note the detail of this report and plans for tackling graffiti across the borough.
2. Agree the Graffiti and Street Art Policy (Appendix 1).

## **1. REASONS FOR THE DECISIONS**

- 1.1 Graffiti is a growing problem costing the council over £500,000 a year in removal costs, it can create a negative perception of an area, contribute to people's fear of crime and increase worries about anti-social behaviour.
- 1.2 The Tower Hamlets Strategic Plan 2018-2021 highlights that graffiti is anti-social behaviour that can have a detrimental impact on the life of our residents, visitors and businesses.
- 1.3 Tackling graffiti is a mayoral priority with commitments to bring in a new graffiti and street art policy, in addition to funding for additional clearance resources.
- 1.4 This commitment supports our strategic plan outcomes of "People living in a borough that is clean and green" and where "People live in safer neighbourhoods where antisocial behaviour is tackled"
- 1.5 In contrast it is recognised that Street Art can positively contribute to the appearance of an area, attract visitors and is good for business. Locations such as Brick Lane have become Street Art tourist attractions, with visitors from around the world going on locally organised graffiti and street art tours.
- 1.6 There is a need for a Graffiti and Street Art Policy that sets out:
  - The council's approach to tackling illegal graffiti.
  - The council's priorities for removing unwanted, racist and offensive graffiti from areas where it causes concern.
  - The council's decision making criteria for graffiti removal.
  - The responsibilities of the council, private property and other land owners for removing graffiti.
  - The council's legal duties to tackle graffiti and our approach to using graffiti enforcement powers.
  - The council's decision making criteria for whether Street Art can remain in place, or should be removed.
- 1.7 This policy is required to help clarify our approach for tackling illegal graffiti where it causes concern, whilst establishing decision making criteria that allows Street Art to remain in place where appropriate.

This policy will allow for clearer decision making and more effective use of funding for additional graffiti removal resources. Additional graffiti removal teams will be deployed where they are most needed, with the ability to clear the historic backlog of unwanted graffiti, whilst also pro-actively targeting any new graffiti.

## **2. ALTERNATIVE OPTIONS**

2.1 Officers have carried out background research to explore potential options available for managing graffiti, street art and defacement, taking into consideration best practice from across other local authorities, with the four main alternatives set out below:

- Taking no action

The council will not take any action to remove any graffiti or defacement regardless of its location unless it is deemed to be of an offensive nature.

This is not recommended because graffiti or defacement will increase in the borough, which will deteriorate local environmental quality, increase fear of crime and reduce resident satisfaction in their neighbourhoods.

- Borough wide ban on graffiti

Graffiti or defacement of any form in any location or surface will not be tolerated by the council and will be removed.

This is not recommended as it fails to recognise the benefit of street art and is unrealistic to enforce.

- Designated areas and graffiti walls

Allow inoffensive graffiti and street art in designated areas and surfaces within the borough.

This is not recommended because previous experience by other local authorities shows that graffiti was left beyond designated areas and difficult to contain in designated areas.

## **3. DETAILS OF THE REPORT**

### **Introduction**

3.1 Tower Hamlets has a high level of graffiti and some areas such as Bethnal Green and Bow require constant attention to be able to keep up with removal of illegal, antisocial and offensive graffiti tagging.

3.2 Unwanted graffiti has a negative impact on local areas and the quality of life for residents and businesses. It can create a negative perception of an area, contribute to people's fear of crime and increase worries about anti-social behaviour.

3.3 Graffiti is a growing concern and requires additional resources to be able to improve upon current performance.

- Our latest performance scores for graffiti (based on twice yearly surveys) show a steady increase in the number of reported incidents on the streets

with unacceptable levels of graffiti from 6.5% in early 2017/18 to 8.1% in the first half of 18/19. In some wards, such as Spitalfields and Banglatown, up to 30% of street surveyed in the areas had unacceptable levels of graffiti.

- The council's Annual Residents' Survey 2018 shows that fewer residents were satisfied with the council's parks and open spaces and cleansing services compared with the previous year, It also shows that people who feel vandalism, graffiti and other deliberate property damage is a problem in their areas increased from 35% to 41%. The recent increase in complaints about graffiti reflects the survey trends.
- Graffiti complaints have increased to over 300 in the last 6 months, compared to just over 100 in the previous 6 months.

- 3.4 The Council is directly responsible for removing graffiti from its property and is only indirectly responsible for other graffiti.
- 3.5 Priority is given to removing offensive graffiti, where it is considered racially offensive, hostile to a religious or belief group, sexually offensive, homophobic, depicts a sexual or violent act or is defamatory.
- 3.6 Recent work has focused on tackling hotspot areas where graffiti is having a negative impact on people's lives, quality of the local environment and fear of crime.
- 3.7 Less priority has been given to removing street art in those areas where it is more welcome. Some residents and businesses believe street art can positively contribute to the appearance of an area, attract visitors and is good for business. Tower Hamlets has one of the most developed street art cultures in the country with locations such as Brick Lane hosting regular Graffiti and Street Art tours for visitors and tourists in London.
- 3.8 In many locations the introduction of street art has led to a reduction in graffiti defacement on properties that had previously suffered from graffiti tagging. However in many locations graffiti and street art exist side by side with illegal graffiti tagging being displaced to a wider area.
- 3.9 Some property owners in places such as Brick Lane commission street artists to decorate their properties, whilst others want to keep street art that has appeared on their property.
- 3.10 In the absence of a clear policy on how to deal with graffiti and street art we have previously followed national guidance and legislation. Where either of these is unwanted and appears without consent, this is viewed as an interference with the property owner's rights and as such the person has committed a criminal offence under the Criminal Act 1971.

## Current arrangements

- 3.11 Legislation for removal of graffiti places the responsibility to remove graffiti on the owner, resident or managers of the property. The council remove graffiti from council owned property and take action to encourage removal of graffiti from private property, where it is visible from the public highway.
- 3.12 Where graffiti is identified on property owned by Businesses, Registered Social Landlords, Private Landlords, Network Rail and Transport for London our teams work with these property owners to ensure they remove their own graffiti.
- 3.13 Local Authorities have power to serve graffiti removal notices to enforce removal on private land. As part of our new approach we will try to work with landowners to encourage them to take action to remove graffiti, but if necessary would use available enforcement powers.
- 3.14 Section 48 of the Anti-social Behaviour Act 2003 gives local authorities the power to serve graffiti removal notices on certain bodies responsible for the surface where graffiti has appeared. These bodies include the owners of street furniture (bus shelters, street signs, phone boxes etc.). The notice gives a minimum of 28 days for the removal of the graffiti, if after that time it has not been removed the local authority can remove it and can recover its costs.
- 3.15 These removal powers can be used when the local authority is satisfied that a relevant surface in an area has been defaced by graffiti, and that the defacement is detrimental to the amenity of the area or is offensive.

Offensive: - applies where graffiti is racially offensive, sexually offensive, homophobic, depicts a sexual or violent act or is defamatory.

Detrimental: - Graffiti that is not 'offensive' can still be detrimental to the amenity of an area. Relevant factors might include: the surface area covered by the graffiti, local complaints and the degree and nature of the graffiti problem in the area.

- 3.16 The Council has a power under section 43 of the Anti-social Behaviour Act 2003 as amended by the Clean Air Neighbourhood & Environment Act 2005 to issue fixed penalty notices to anyone caught doing graffiti. The fixed penalty notice for this offence is set out in the Environmental Offences (Fixed Penalties) (England) Regulations 2017 which came into force on 1<sup>st</sup> April 2018. Details of the charges appear in the legal comments at section 7 below.
- 3.17 Further enforcement powers are available to deal with graffiti offenders such as the issuing of Community Protection Notices, which can be used to help prevent individuals, aged 16 or over from doing specified things, including graffiti tagging.

- 3.18 A person who fails to comply with a Community Protection Notice commits a criminal offence and on conviction if an individual, liable to a fine not exceeding level 4 (£2,500) or if a body, to a fine not exceeding £20,000
- 3.19 In addition to removal powers the council will be re-focusing officer resources to deal with graffiti offences and reviewing the use of available enforcement powers to help tackle graffiti.

**Clearing unwanted, offensive, racist and antisocial graffiti from where it is not wanted**

- 3.20 Graffiti removal is carried out by our waste & street cleansing contractor Veolia until April 2020. Within the specifications, Veolia are tasked to remove offensive graffiti within 24 hours and non-offensive graffiti within five working days. Non-offensive graffiti is only to be removed on council property. Private landlords or other housing management organisations can request the council to remove graffiti on their property. They will be asked to sign a disclaimer to exonerate the council of any responsibility if the action of removing graffiti causes damage to a property.

At present, the following services are provided across the borough:

- On public buildings or highways and street furniture – removed for free by the council
  - On a Tower Hamlets Homes Estate – clearance is organised via the local housing office.
  - On property and estates roads managed by private landlords - Removal of graffiti on private property is the responsibility of the owner(s). Many have their own graffiti removal teams in place so in the first instance, the council's contact is via the relevant housing office or managing agents to organise graffiti removal.
  - On other private property – Many individual owners/occupiers of private dwellings do not have access to a graffiti removal facility. So if the graffiti is not too large and is accessible from the road or a car park, the council may arrange for its removal free of charge for the first time, subject to a disclaimer being signed by the owner of the property. Subsequent removal would normally be subject to a charging, although fees and charges will be reviewed as part of revised plans.
- 3.21 The council has been working with Veolia to deliver an improved graffiti removal service. With more targeted use of clearance teams to deal with hotspots, problems areas and locations suffering from repeated graffiti incidents. However, efforts are hampered by the sheer volume of graffiti across the borough, built up over a number of years.

- 3.22 Cleaning up graffiti costs the council over £500,000 a year with two dedicated team teams carrying out daily removal work. A third team provides additional support in addition other work such as street furniture washing.
- 3.23 Two dedicated council officers have been working to ensure these teams have a steady flow of work, liaising with customers and property owners to obtain permission and waivers to carry out work on private property and provision of graffiti prevention advice.

In the last 12 months these teams have dealt with over 658 reported incidents of graffiti, as well as proactive removal from known hotspots and problems areas. Appendix 3 gives examples of the range of work completed by these teams. From individual tag removal in less than an hour, large scale removal taking from half to a whole day or clearance of whole streets and areas over a number of days.

- 3.24 Plans are being developed to clean up areas where residents and businesses feel blighted by graffiti vandalism, whilst at the same time leaving street art in areas where property owners have given permission, is not causing offense, and is supported by the local resident and business community.

#### **Funding for additional resources**

- 3.25 With the Mayor making a manifesto commitment to tackle graffiti, £450,000 per year of additional funding has now been requested for the next two years. This will allow for an additional four graffiti removal teams to help tackle the current backlog and to allow for more proactive removal of graffiti where required.
- 3.26 It is envisaged that with additional dedicated teams in place and a revised framework for managing the service, there will be a significant visible impact, both in terms of the speed of removal, return visits and ensuring a cleaner environment
- 3.27 This additional funding for the next two years will allow us to tackle the backlog and coincides with the start of our In-House Waste and Cleansing Service from April 2020. Funding will allow early replacement of vehicles and equipment to help improve the service, with operational plans aiming to bring new teams into service from as early as possible in 2019/20.
- 3.28 This approach will allow additional teams and dedicated council officer's resources to target and clear areas, with the ability for near immediate return visits to tackle any re-occurring graffiti or tagging.
- 3.29 The council will also consider the introduction of a chargeable anti-graffiti coating service along with advice on graffiti prevention. This will reduce future costs of removing graffiti.
- 3.30 In addition we will be reviewing operational plans to work more closely with Community Payback teams. The Community Payback scheme, hosted by the

London Community Rehabilitation Company (LCRC), provides local communities the opportunity to suggest suitable areas for offenders to rejuvenate as part of their Community Order. LCRC works with offenders aged 18 and over who have been either sentenced by the courts to a Community Order or Suspended Sentence Order, or released on licence from prison to serve the rest of their sentence in the community.

- 3.31 Community Payback projects include removing graffiti, litter removal and environmental improvements. As part of developing plans the council will aim to carry out regular Community Payback Graffiti removal project.
- 3.32 A new graffiti and street art policy (the policy) will allow for clearer decision making and more effective use of these additional graffiti removal resources.

### **A new graffiti removal and street art policy**

- 3.33 We have developed a new policy (attached in Appendix 1) which takes into consideration the different impacts of graffiti, whilst maintaining a clean, safe and vibrant environment for everyone living and working in the borough. This will give a clear indication on our priorities, responsibilities for clearance, charges for removal and enforcement approach.
- 3.34 This policy recognises the adverse impact graffiti and fly-posting can have on public and visitor perception, although it also acknowledges that street art is different and can positively contribute to the appearance of an area. Some property owner's commission street artists to decorate their properties enhancing visitor engagement with the public realm. This is viewed as a positive attraction to the borough, with real potential to prevent graffiti vandalism.
- 3.35 The council recognises that public opinion on what constitutes graffiti has changed and that some graffiti is now considered to be street art. It recognises that street art can make a positive contribution to the urban environment.
- 3.36 The policy sets out how street art can be approved, subject to meeting certain criteria and not being a detriment to local environmental quality.
- 3.37 If a property owner wishes to apply an artwork to their property they must also inform the councils in line with this policy. Details relating to this process will be made available on the council's website.
- 3.38 Where graffiti has already been applied to a property but the owner of the property considers the graffiti to be street art, any decision to remove the work will be based upon a test of whether the street art or graffiti are considered to be detrimental to the local environment and enjoyment of the location by users.



The list below highlights key considerations:

- Can the street art/graffiti be seen from areas the public are entitled to frequent.
- Is the street art offensive in its nature, gang related, racially aggravating, insulting and against public interest.
- Are the images considered to be contextually detrimental including but not limited to:
  - o Likely to encourage more graffiti or tagging
  - o Inappropriate for the location or out of keeping with surrounding area.
  - o Likely to cause saturation of an area, with consideration of the number of images already present.
  - o A cause of complaints to the council
  - o Explicit Images
  - o Intimidating
  - o Libellous or potentially libellous statements
  - o In a conservation area

3.39 This list is not exhaustive and adequate exploration of the detriment question is critical to provide the Council with a clear and considered rationale for any decision. Especially where conflicting opinions between owner/occupiers, the council and the community exist. This is a matter of judgment for the decision taker, acting reasonably and having due regard to national guidance and to this policy.

### **Graffiti and Street Art Policy - Decision making**

3.40 In order to highlight the decision making process within the Policy, Appendix 2 sets out a flow diagram illustrating how decisions on removal of graffiti or street art will be made.

While graffiti and street art will be evaluated using this process, there may be occasions when it is difficult to make a clear decision. In this situation cases will be referred to an evaluation panel made up of council officers

3.41 The evaluation panel will review each case applying the policy criteria in order to reach agreement on whether a piece is removed or allowed to remain in place.

This approach needs to be developed to allow for effective evaluation and agreement.

3.42 Evaluation by the board will take place when the council receives challenge and complaints from the community and when trained council staff have found it difficult to apply to policy and make a decision.

3.43 Appendix 3 sets out typical examples of graffiti and street art within the borough. From these examples there is a clear distinction that can be made between graffiti and street art, using the proposed criteria within the Policy.

## **Communications of the policy**

- 3.44 Once approved, the policy will be communicated as part of the Love Your Neighbourhood campaign. Communication will focus on the need to remove graffiti from areas that are suffering the impact, whilst accepting that approved street art can enhance an area and help prevent graffiti vandalism.

## **4. EQUALITIES IMPLICATIONS**

- 4.1 An Equalities Analysis has been carried out in relation to the Graffiti and Street Art Policy to identify any evidence or views that suggests that different equality or other protected groups could be adversely and/or disproportionately impacted by the policy.
- 4.2 The policy is expected to make a positive impact on the environment of the Borough, which will be beneficial for all regardless of their background.

## **5. OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report highlights further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration.

### **5.2 Best Value Implications**

- 5.3 The total amount paid to Veolia for street furniture cleansing and graffiti removal is £543,073 per year. We are currently reviewing the outputs and performance of these teams with plans in place to ensure transfer of this service back in house from April 2020.

### **5.5 Environmental (including air quality)**

- 5.6 Plans are being developed to ensure that all new graffiti removal vehicles and equipment comply with clean air emission standards. Operational plans will include measure to reduce as much as possible any adverse impacts on air quality.

### **5.9 Risk Management**

- 5.10 Lack of clear policy and action on tackling the increasing levels of graffiti across the borough would lead to an ever worsening situation with graffiti. The lack of a clear approach would risk our ability to deliver on priority outcomes for the borough - "People living in a borough that is clean and green" and where "People live in safer neighbourhoods and antisocial behaviour is tackled"

### **5.11 Crime Reduction**

- 5.12 The Council's activities for tackling litter, fly tipping, removal of graffiti and flyposting that are incorporated into the Waste Management Strategy. This work contributes to the Council's efforts in managing anti-social behaviour within the borough. The new waste management service will continue to incorporate the current policy requirement for the immediate removal of racist or offensive graffiti from Council owned property.

## **6. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 This report asks the Mayor in Cabinet to note the plans proposed in this report for tackling graffiti in the borough, to note the Equalities Impact Assessment and to adopt the Graffiti and Street Art Policy, attached at Appendix 1.
- 6.2 As outlined in this report, the removal of graffiti is currently undertaken by Veolia at a cost of over £543,000 per year. Investing in graffiti removal is a Mayoral manifesto pledge, and as part of the 2019/20 budget process a growth bid has been submitted for £450,000 for two years in order to provide four teams to tackle the backlog of graffiti in the borough.

## **7. COMMENTS OF LEGAL SERVICES**

- 7.1 The Council has power under section 43 of the Anti-social Behaviour Act 2003 as amended by the Clean Air Neighbourhood & environment Act 2005 to issue fixed penalty notices to anyone caught doing graffiti. The Environmental Offences (Fixed Penalties) (England) Regulations 2017 which came in force on 1st April 2018 amended the penalty charge for this offence. The minimum is £50.00 and will rise to £65.00 from 1April 2019. The maximum is currently set at £150.00.
- 7.2 In addition under section 43 Antisocial Behaviour Crime and policing Act 2014, the council has power to issue a Community Protection Notice to an individual aged 16 or over, or a body requiring the person or body to stop doing specified things, to do specified things or take reasonable steps to achieve specified things, if satisfied on reasonable grounds that: (a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and b) the conduct is unreasonable.
- 7.3 Any conduct on or affecting premises is to be treated as the conduct of the owner or occupier.
- 7.4 Where a person issued with a community protection notice fails to comply with requirement of the notice, the Council may have work carried out to ensure that the failure is remedied, but only on land that is open to the air. Where the premises is not open to the air, the Council would first need to issue a notice specifying the work it intends to have carried out to ensure that the failure is remedied, the estimated cost of the work, and invite the defaulter to consent to the work being carried out before doing so. The consent must be

obtained from the defaulter and the owner of the premises on which the work is to be carried out unless the authority is unable to contact the owner after making reasonable efforts to do so.

- 7.5 A person who fails to comply with a Community Protection Notice commits a criminal offence and on conviction if an individual, liable to a fine not exceeding level 4 (£2,500) or if a body, to a fine not exceeding £20,000.
- 7.6 Additionally, the Council has powers under section 1 of the Antisocial Behaviour Crime and Policing Act 2014 to apply for an injunction to compel the owners and occupiers of premises to remove graffiti from premises.
- 7.7 When carrying out its duties under this policy, the Council will be obliged to comply with its duties under section 149 of the Equality Act 2010 that is, the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act, advance equality of opportunity between people who share a protected characteristic and those who do not and foster good relations between people who share a protected characteristic and those who do not.
- 7.8 The making of a Graffiti and Street Arts Policy is not specified as a function that falls outside the responsibility of Cabinet under the Local Authorities (Functions & Responsibility) (England) Regulations 2000. Accordingly, the decision on whether to adopt the Graffiti and Street Arts Policy may be made by the Mayor in Cabinet.

## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

- Appendix 1 – Graffiti and Street Art Policy
- Appendix 2 – Decision making flow chart
- Appendix 3 – Examples of Graffiti and Street Art
- Appendix 4 – Equality Analysis

**Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012 – None**

### **Officer contact details for documents:**

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