

Amendments to Chapter 693, Signs, Article II, Election Signs

Date: April 19, 2017

To: Licensing and Standards Committee

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

This report responds to direction from the Licensing and Standards Committee at its meetings of May 26 and August 18, 2014, which requested, among other things, a review of the current Election Signs Bylaw, as well as direction from City Council at its meeting of December 13-15, 2016, which requested staff to report on the impacts of the recently amended *Municipal Elections Act* on the Election Signs Bylaw, including provisions related to third party advertising.

Staff are proposing a series of amendments to Chapter 693, Signs, Article II, Election Signs to simplify and clarify bylaw requirements, address concerns previously raised by the Ombudsman and the Auditor General regarding a number of administrative challenges experienced with the current bylaw, and take into account and reflect changes to the *Municipal Elections Act, 1996*, respecting third party advertising in elections.

The proposed amendments include:

- eliminating the current election sign deposit, waiver/affidavits process, and fee structure for the removal and storage of improperly displayed election signs;
- reducing the time period for which election signs for a municipal election may be displayed from 25 days to 21 days prior to voting day;
- reducing the timeframe for which the City retains seized election signs from 30 days to 72 hours after the completion of voting on election day;
- clarifying regulations for the display of "campaign office signs";
- new regulations, similar to existing regulations for TTC dedicated advertising space, that allow election signs on the dedicated advertising space on street furniture;
- new regulations to allow election signs on vehicles and trailers, provided that signage does not obstruct visibility/block sightlines, and is not located adjacent to a voting place, City park, or facility that is owned or operated by the City;
- eliminating regulation around the indoor display of election signs;

- additional clarification around requirements for election sign placement on public property to address public safety/sight line obstructions; and
- modifying definitions to capture third party advertising signs and introducing additional provisions; in line with changes to the *Municipal Elections Act*.

The City Solicitor is expected to report out separately on any issues arising from the amendments to the *Municipal Elections Act* and the broader implications of third party advertising in municipal elections.

City Clerk's Office and Legal Services were consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. City Council amend Toronto Municipal Code, Chapter 693, Signs, Article II, Election Signs, as described in Attachment 1.
2. City Council direct that the proposed changes come into force on January 1, 2018.

FINANCIAL IMPACT

There are no financial impacts beyond what has already been approved in the current year's (2017) budget.

Historically, the revenue the City collects is minimal and only partially offsets the expenses the City actually incurs for election sign administration and enforcement.

In 2018, there may be loss of revenue (unbudgeted) of approximately \$18,000 as a result of the elimination of the current election sign deposit and the fees associated with the City's removal and storage of improperly displayed election signs, based on historical experience.

In the 2014 Municipal Election, the full-time equivalent (FTE) of 24 Municipal Standards Officers were dedicated to enforcement of the Election Signs Bylaw. The cost to Municipal Licensing and Standards (ML&S) for salary and benefits was approximately \$106,521.

Taking into account the election sign deposits received from the 226 candidates who displayed election signs in the 2014 Municipal Election, all the deposits subsequently refunded, as well as all the fees billed and then subsequently waived and written off, the City collected \$13,118 in revenues. Based on 2017, a revenue loss of \$18,000 is equivalent to a net expenditure increase of 0.1%; however this would only apply in election years.

Although there may be loss of revenue for the City in 2018, any loss is expected to be offset by administrative efficiencies that will be realized.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of December 13-15, 2016, City Council adopted [EX20.5 Changes to the Municipal Elections Act and Related Matters Impacting the 2018 Election](#), and requested the City Solicitor and the Executive Director of Municipal Licensing and Standards, to report on the impact of the amended Municipal Elections Act on Toronto's sign bylaw and on any potential legal challenges to the provisions in the amended Municipal Elections Act which allow third party advertising.

At its meeting of August 25-28, 2014, City Council referred [LS30.1 Amendments to Chapter 693, Signs, Article II, Election Signs](#) back to the Licensing and Standards Committee for further consideration in the second quarter of 2015.

At its meeting of August 18, 2014, the Licensing and Standards Committee considered [LS30.1 Amendments to Chapter 693, Signs, Article II, Election Signs](#), and requested the Executive Director, Municipal Licensing and Standards to report directly to City Council on corners and right-of-way issues.

At its [meeting of May 26, 2014](#), Licensing and Standards Committee requested the Executive Director, Municipal Licensing and Standards, to review the City's existing Election Signs Bylaw and report to the August 18, 2014 Licensing and Standards Committee meeting on any recommended changes.

COMMENTS

Election signs have always been an integral part of any election process be it municipal, provincial or federal. Candidates use signs to create awareness for themselves and to promote their campaign. It also assists to create awareness for residents to recognize who is running for office.

However, over the years, a number of issues have been raised with respect to election signs and the City's existing Election Signs Bylaw. The Ombudsman and the Auditor General expressed specific concerns with the respect to the 2006 and 2010 Municipal Elections. These issues revolve around the significant amount of time and expenses incurred to administer and enforce the bylaw including, collecting election sign deposits, assessing fees, attempting to collect monies owed to the City, and refunding/waiving processes. The Ombudsman and the Auditor General further expressed the need for clear and simple provisions for the display of election signs.

In June 2016, the Provincial government passed Bill 181, *the Municipal Elections Modernization Act, 2016*, which amended the *Municipal Elections Act, 1996 (MEA)*. There are specific impacts to the City's Election Signs Bylaw, as a result of changes to the rules governing third party advertising. Amendments to the City's existing Election Signs Bylaw are required to address both the identified issues as well as capture the recent changes to the MEA.

A further report from the City Solicitor is anticipated respecting the issues arising from the amendments to the MEA regarding third party advertisers, including any potential legal challenges.

Proposed Bylaw Amendments

1. Election Sign Deposit, Removal and Storage, and Waiver of Fees Process

Currently, Chapter 693 requires each candidate to pay an election sign deposit of \$250, prior to any election signs being displayed on public property. The deposit is refundable subject to any deductions made to cover the removal and storage costs for election signs displayed on public property in contravention of Chapter 693. Removal is charged at \$25 per sign. Storage is charged at the greater of a) \$2 per sign per day or part thereof, or b) \$0.50 per square metre of total sign face area per day or part thereof, and the fees are applied to the candidate to whom the sign relates. Although no deposit is required to display election signs on private property, similar removal fees apply where election signs displayed on private property, contravene bylaw requirements.

In cases where the costs incurred by the City to remove and store such signs exceed the election sign deposit paid by the candidate, the candidate is required to pay the balance owing within 30 days after the election date. Where a candidate has not paid the election sign deposit, in addition to any fine or other penalty, the candidate will be required to pay the City the costs for sign removal and the amount may be recovered by legal action or in like manner as municipal taxes.

Under Chapter 693, only the fees deducted from a candidate's election sign deposit (for the removal of election signs improperly displayed on public property), may be waived. These specific fees may be waived, if, within 30 days from the date of receiving a notice of fees due to the City, the candidate provides a sworn statement (in the form of a signed affidavit) to the City Clerk indicating that "neither the candidate nor to the best of the candidate's knowledge, any person acting on behalf of the candidate was responsible for the unlawful erection or display of the election sign".

The appropriateness of this waiver process has been a recurring issue in past elections. Over the years, the practice of collecting election sign deposits, assessing and tracking fees, invoicing and attempting to collect monies owed, and then refunding monies, have required a significant amount of staff time and resources on the part of ML&S, as well as other divisions including the City Clerk's Office, Legal Services, and Policy, Planning, Finance and Administration. The resources expended, exceeds the revenues the City collects.

The Ombudsman and the Auditor General have also raised specific concerns that it appeared as though in past elections, that some candidates were simply relying on the printed wording of the standard affidavit form to get their fees automatically waived (even where fees were not eligible to be waived). In the 2014 Municipal Election, the City waived \$63,497 in fees, and in previous years, the amounts written off as a result of this process have also been significant.

Staff propose that the existing election sign deposit, waiver/affidavit process, and the current fee structure for the removal and storage of improperly displayed election signs, be eliminated.

Previously, staff considered replacing the current election sign deposit with a non-refundable flat election sign fee. At the August 18, 2014 meeting of Licensing and Standards Committee, staff presented a proposal for a \$250 election sign fee for candidates, which, Licensing and Standards Committee subsequently recommended to be reduced to \$125. At that meeting, staff also proposed that a per-sign fee of \$25 be implemented to cover the costs of removal and storage of improperly erected signs from public and/or private property outside of the Election Sign Period.

However, after further review, staff propose that no fee be charged to candidates, residents, as well as registered third party advertisers wishing to display election signs on public property, during the Election Sign Period.

Currently, there is no deposit or fee required for anyone to display election signs on private property.

Having no deposit or fee removes barriers to entry in the political arena and allows all candidates (and third party advertisers) the same opportunity to advertise and promote themselves (and/or their candidates or issues). At a previous public consultation session (held on July 16, 2014), staff heard concerns that requiring candidates to pay a fee to display election signs would effectively disadvantage those candidates with less access to campaign resources (e.g., new candidates).

While election signs provide a direct benefit to the candidates running in an election, they also provide a benefit to the general public/community at large by allowing freedom of expression and democratic rights to be upheld.

2. Time Period for when Election Signs may be Erected or Displayed

The City regulates the timing for when election signs may be erected or displayed, with Chapter 693 currently specifying that election signs shall not be erected or displayed for a federal or provincial election, until the writ of election is issued, and for a municipal election, until 25 days prior to voting day. Further, on campaign offices, election signs shall not be displayed until 90 days prior to voting day. All election signs must be removed within 72 hours after the completion of voting on election day.

Staff propose an amendment to the time period for which election signs for municipal elections may be displayed, to 21 days prior to voting day. In past municipal elections,

existing enforcement resources were reassigned to handle the dedicated enforcement of the Election Signs Bylaw, meaning that resources during this period were often strained, making the enforcement of other City bylaws and the services normally provided, more challenging. A reduction in the period of time to display election signs would lessen the impacts to services for residents.

This reduction in the election sign time period is consistent with the original request of Licensing and Standards Committee, at its meeting of May 26, 2014, where it was recommended that the Election Sign Period be amended to three weeks. Although, at its meeting of August 18, 2014, Licensing and Standards Committee further recommended that the time period be reduced to 14 days for federal, provincial and municipal elections, there is concern that any significant reduction in the time period may be viewed as a restriction on one's right to freedom of expression under the Canadian Charter of Rights and Freedoms, and, may potentially give rise to Charter issues.

With respect to the display of election signs on campaign offices, staff also propose amending the time period to be consistent with the timing requirements for the display of all other election signs for federal, provincial and municipal elections. That means: a candidate to a federal or provincial election may display his or her election sign on his or her campaign office from the day the writ of election is issued; a candidate of a municipal election may display his or her election sign on his or her campaign office from 21 days prior to voting day.

Staff also propose that a provision be added to Chapter 693 so that where the day the writ of election is issued, or, the 21st day prior to voting day is a date of cultural or religious significance, election signs may not be erected or displayed until the following day. Dates of cultural or religious significance will be indicated in the annual schedule of meetings adopted by Council and published by the City Clerk as required by Chapter 27, Council Procedures.

The time between when election signs are permitted to be displayed until the time that they are required to be removed, will also be clearly defined in Chapter 693 as the "Election Sign Period".

3. Time Period for the Storage of Election Signs and Notice for Removed Election Signs

Presently, when a sign is removed as a result of being erected or displayed in contravention of Chapter 693, the City is required, with an exception for signs made of paper or other lightweight materials, to store the sign for a minimum of 30 days after removal.

This timeframe, as it varies based on the time that the sign is removed, and the volume of signs removed, creates an administrative burden concerning the notification to sign owners, and the tracking and storage of election signs. Therefore, to increase the efficiency of administering Chapter 693, amendments to the storage requirements are being proposed.

Staff propose a change to the timeframe for which the City stores improperly displayed election signs. It is proposed that election signs removed by the City be stored for the duration of the Election Sign Period plus an additional 72 hours after the Election Sign Period.

Staff have established business processes which will allow staff to take an inventory of all signs removed at the end of each business day and, within 24 hours, notify the candidate to whom the sign relates. As a result, reducing the timeframe which the City stores removed election signs will not adversely impact candidates, while assisting to minimize the City's costs associated with storage.

With respect to methods of notification, staff also propose the addition of email and personal delivery as valid forms of notice (in addition to fax or registered mail).

Affected candidates (and their agents) will have the opportunity to retrieve their election signs within this timeframe, and any signs not retrieved may be recycled, destroyed or otherwise disposed of without notice and without compensation to the owner of the sign.

4. Campaign Office Signs

While Chapter 693 contains specific permissions and restrictions around the display of election signs on campaign offices, it does not contain any provisions around the display of first party identification signs which identify a location as a functioning campaign office or "campaign office signs". As a result, these campaign office signs are regulated by the City's existing sign bylaws, and not the Election Signs Bylaw. This has led to issues with individuals erroneously conflating existing provisions around the display of election signs on campaign offices with the regulations that apply to first party identification signs which identify a location as a functioning campaign office.

Staff propose that Chapter 693 be amended to define and regulate the display of "campaign office signs".

The definition will specify that a campaign office sign may only contain sign copy which identifies the name of the candidate and the location of the candidate's campaign office, and shall not contain sign copy dedicated to electioneering for the candidate. The definition will clearly distinguish a campaign office sign from an election sign.

Detailed requirements for the display of campaign office signs will also be added to the bylaw. The following, are the proposed requirements:

A campaign office sign:

- must be affixed to a campaign office;
- must be on sign structure in accordance with the requirements of the applicable permit issued under Chapter 694, or under the authority of a sign bylaw passed by the City, former area municipality, or the former Municipality of Metropolitan Toronto;

- must be no larger than 2.5 square metres in area, must not have more than one sign face, and the highest point of the sign must not be higher than 4.0 metres above grade;
- must not interfere with the safe operation of motor vehicular traffic, cyclists, and with the safety of pedestrians, and must not obstruct visibility or block sightlines;
- cannot be displayed until the day the writ of election is issued for a federal election or provincial election/until a candidate has filed his or her nomination papers for a municipal election; and
- must be removed within 72 hours after the completion of voting.

Further, only one campaign office sign will be permitted per campaign office.

5. Placement of Election Signs

Chapter 693 sets out where election signs are permitted and not permitted to be displayed, with guidelines respecting public and private property. Restrictions on the placement of election signs are imposed with safety as the primary consideration.

Currently, on public property, election signs must be displayed with the consent of the owner or occupant of the abutting property, and are prohibited: within 1.5 metres of a curb or the edge of pavement on highways without sidewalks; between the curb and sidewalk on highways with sidewalks; within 15 metres of an intersection or pedestrian crossover; on a median or island installed on a highway; adjacent to a voting place, City park or facility.

At the public consultation session (held on July 16, 2014), as well as at the August 18, 2014 meeting of the Licensing and Standards Committee, concerns were raised around the difficulty in interpreting and applying current bylaw provisions around election sign placement. At Committee, there were also specific concerns expressed that existing regulations did not adequately take into account election sign placement in areas of the City where there are large boulevards with sidewalks and at properties that have limited private property space and/or are located on corners.

In an effort to simplify and clarify bylaw requirements, staff propose amendments to current regulations, so that:

- the consent of the owner or occupant of the abutting property will no longer be required to display election signs on public property;
- on both highways with sidewalks and without sidewalks, election signs are not to be located within 1.5 metres of the curb or edge of pavement; and
- on highways with sidewalks, election signs are not to be located within 0.6 metres of either side of the sidewalk.

Staff do not recommend changes to the current prohibition on the display of election signs within 15 metres of an intersection or pedestrian crossover. While staff recognize the limitations this requirement has on properties that have limited private property space and/or are located on corners, ensuring public safety and visibility for all road users is of utmost importance.

Staff also propose the elimination of all existing restrictions on the display of election signs indoors, including, the current restriction that limits the size of election signs displayed indoors to 1.2 square metres. Removing this restriction will allow properties that have limited private property space and/or are located on corners greater flexibility to display election signs in their windows.

Finally, in line with strengthening safety provisions, staff recommend that the current provision which prohibits election signs from interfering with the safe operation of vehicular traffic and with the safety of pedestrians, be expanded to include that election signs also must not interfere with cyclists, nor obstruct visibility or block sightlines. These provisions are consistent with similar provisions contained in Chapter 743, Streets and Sidewalks.

6. Placement of Election Signs on Dedicated Advertising Spaces Located on Public Property

In 2011, Chapter 693 was amended to provide specific provisions pertaining to the display of election signs on dedicated advertising spaces operated by the Toronto Transit Commission (TTC).

Following this change, City staff received various requests to consider adding similar provisions to clarify and simplify the issues concerning displaying election signs on "street furniture" elements located on public highways.

Staff propose that provisions around the placement of election signs on street furniture dedicated advertising spaces, which mimic provisions that presently exist for election signs on TTC dedicated advertising spaces, be added to the bylaw.

The following regulations are proposed for election signs displayed on street installation dedicated advertising spaces:

The election sign:

- must be located on advertising space permitted under the terms and conditions of any agreement between the owner/operator of the street installation dedicated advertising space and the City
- must not be illuminated, unless permitted under the terms and conditions of any agreement between the owner/operator of the street installation dedicated advertising space and the City
- must not be larger than the area of the street installation dedicated advertising space
- must not interfere with the safe operation of motor vehicular traffic, cyclists, and with the safety of pedestrians, and must not obstruct visibility or block sightlines
- must not be erected/displayed adjacent to a voting place; and
- must be erected/displayed with the consent of the City and the owner of the street installation.

Additional modifications are also proposed to the Election Signs Bylaw to ensure that similar regulations exist for dedicated advertising structures located on public property, as are present for those on private property. These provisions are in addition to those

that exist in the Election Signs Bylaw for the display of signs on structures, including bus shelters and a municipal garbage containers.

7. Placement of Election Signs on Vehicles and Trailers

Over the last number of years, concerns have been raised with respect to the way in which mobile signage is being employed to advertise and promote candidates in an election. Elections signs are increasingly being attached, affixed or painted to the surface of various vehicles and trailers, although not currently permitted.

To address this growing demand, staff propose the addition of new rules that would allow the display of election signs on vehicles and trailers, provided that such signage does not obstruct visibility or block sightlines for pedestrians, cyclist, and motorists, and is not parked or stopped adjacent to a voting place, City park, or facility that is owned or operated by the City.

8. Amendments Related to Changes in the *Municipal Elections Act, 1996 (MEA)*

Third Party Advertising

Effective April 1, 2018, the MEA will include a framework to regulate third party advertising, with provisions around expenses, contribution and spending limits, identification requirements, record keeping, and registration. While these provisions are new, third party advertising has been permitted in previous municipal elections. The restrictions in force effective April 1, 2018, will constrain third party advertisers by setting limits on spending and expenses. It is important to note that third party advertisers are afforded *Charter* protected rights involving freedom of expression.

Under the MEA, "third party advertisement" is defined as an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting, supporting or opposing, a candidate, or, a "yes" or "no" answer to a question on the ballot. However, advertising that does not cost money to post or broadcast, such as comments on social media, is not to be considered third party advertising.

Individuals, corporations, and unions may register as third party advertisers and make contributions to third party advertisers. Third party advertisers will be required to register with the Clerk of the municipality where they will advertise.

Third party advertising must be done independently of candidates who are not able to direct a third party advertiser, nor register as third party advertisers.

Third party advertisers and candidates will be required to identify themselves on signs and campaign advertisements, so that it is clear who is responsible for each sign and advertisement. Municipalities are also provided with the authority to remove or discontinue any advertising that contravenes MEA requirements.

In light of these changes to the MEA, corresponding amendments to Chapter 693 are required.

Specifically, staff propose the addition of new definitions, such as "registered third party" (consistent with the MEA) and "outsider election signs" which will capture third party advertisers and related election signs erected by third party advertisers.

The "outsider election signs" erected by the third party advertisers will need to comply with the City's regulations respecting election signs, so that outsider election signs will be restricted in the same manner as election signs.

Staff also propose that provisions be added to require third party advertisers to register with the City Clerk prior to being able to display their signs, and, outsider election signs to contain valid and up-to-date contact information to identify at least one individual responsible for the display of the sign.

Election Signs

The MEA also contains provisions concerning residential premises, preventing landlords and condominium corporations from prohibiting tenants or owners from displaying election signs on their premises. However, reasonable conditions may be set by a landlord, person, condominium corporation or agent relating to the size or type of election signs that may be displayed on the premises and they may prohibit the display of election signs in common areas of a building, with the exception of buildings used as voting places.

Currently, the Election Signs Bylaw does not contain any provisions that address compliance with requirements of landlords and condominium corporations, prior to the display of an election sign. The issue of disputes between residents and landlords/condominium corporations are private matters, and do not require the involvement of ML&S staff as an aspect of enforcement of the Election Signs Bylaw. As such, no amendments concerning the requirements of landlords and condominium corporations respecting the display of election signs are proposed.

Next Steps

The City Solicitor will report further, separately, on any issues arising from the amendments to the *Municipal Elections Act* and the broader implications of third party advertising in municipal elections.

If City Council adopts staff's proposed amendments to the Election Signs Bylaw, the changes will come into force on January 1, 2018

CONTACT

Carleton Grant
Director, Policy and Strategic Support
Municipal Licensing and Standards
Tel: 416-338-5576
Email: Carleton.Grant@toronto.ca

SIGNATURE

Tracey Cook
Executive Director, Municipal Licensing and Standards

ATTACHMENTS

Attachment 1: Proposed Amendments to Chapter 693, Signs, Article II, Election Signs