

**In reply please quote:
REF.: 02-PT#2(3)**

February 21, 2002

PLANNING AND TRANSPORTATION COMMITTEE:

I am enclosing for your information and any attention deemed necessary, Clause No. 3 contained in Report No. 2 of The Planning and Transportation Committee, headed "Harmonization of the Sign By-law Concerning Posters on Utility Poles", which was adopted, as amended, by the Council of the City of Toronto at its meeting held on February 13, 14 and 15, 2002.

In so doing, Council referred the following motion to the Planning and Transportation Committee for consideration at its public meeting scheduled to be held on March 25, 2002:

Moved by Councillor Jones:

"It is recommended that the location and placement of all collars be determined by the Commissioner of Works and Emergency Services, in consultation with the local Ward Councillor."

for City Clerk

M. Toft/gc

Encl.

Clause sent to: Commissioner of Urban Development Services
 Acting City Solicitor
 Planning and Transportation Committee
 All Interested Parties

c. Executive Director, Municipal Licensing and Standards Division

Clause embodied in Report No. 2 of the Planning and Transportation Committee, as adopted by the Council of the City of Toronto at its meeting held on February 13, 14 and 15, 2002.

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**Harmonization of the Sign By-law
Concerning Posters on Utility Poles**

(City Council on February 13, 14 and 15, 2002, amended this Clause by adding thereto the following:

“It is further recommended that the following motion be referred to the Planning and Transportation Committee for consideration at its public meeting scheduled to be held on March 25, 2002:

Moved by Councillor Jones:

‘It is recommended that the location and placement of all collars be determined by the Commissioner of Works and Emergency Services, in consultation with the local Ward Councillor.’ ”)

The Planning and Transportation Committee recommends that it be authorized to hold a public meeting on March 25, 2002 to consider the proposed by-law amendments with respect to posters on utility poles and that Notice of Hearing be given in accordance with the requirements of the Municipal Act.

The Planning and Transportation Committee reports having requested the Commissioner of Urban Development Services, in consultation with the City Solicitor where necessary, to report further to the public meeting on March 25, 2002, on:

- (1) utilizing a system of issuing stamps, for a nominal fee, as a means of identifying erectors of signs;
- (2) permitting a percentage of advertisers to place signs free of charge for local issues such as lost pets, etc;
- (3) instances in which posters of a commercial nature can be prohibited;
- (4) whether the placement of posters can be limited to non-commercial advertisers;
- (5) a proposal that Toronto Hydro be requested to share in the cost of purchasing the collars;

- (6) the feasibility of utilizing Waste Management crews within the Department of Works and Emergency Services to be responsible for removing posters;
- (7) the following proposed amendments to the report (December 12, 2001) from the Commissioner of Urban Development Services:
 - (a) amend Recommendation (3) by adding the following additional section:
 - “(g) the names and telephone numbers of advertisers be clearly printed on the poster”;
 - (b) amend Recommendation (6) to include the words “Members of Council”, so as to read:
 - “(6) The Commissioner of Urban Development Services, the Commissioner of Works and Emergency Services, Members of Council, Toronto Hydro Corporation, and the Toronto Transit Commission, or their designates, be authorized to remove any poster or sign in the course of periodic cleaning or maintenance, or where it is found that a poster or other sign is displayed in contravention of the by-law;”.

The Planning and Transportation Committee submits the following report (December 12, 2001) from the Commissioner, Urban Development Services:

Purpose:

To report on alternative options to simplify the proposed by-law and suggest alternative enforcement strategies and cost recovery options, as requested by Council.

Financial Implications and Impact Statement:

The adoption of the recommendations contained in this report will result in the purchase of 2,000 collars at a cost of approximately \$60,000.00. In addition, there will be an additional cost of installing the collars.

Details of the full costs of this proposal will be reported on in a joint report with the Commissioner of Works and Emergency Services to the Budget Advisory Committee during the 2003 operating budget approval process for implementation in the first quarter, 2003. The report will outline the costs of the installation, maintenance and ongoing enforcement related to the programme.

Recommendations:

It is recommended that:

- (1) the Planning and Transportation Committee be authorized to hold a public meeting on March 25, 2002 to consider the proposed by-law amendments with respect to posters on utility poles and that Notice of Hearing be given in accordance with the requirements of the *Municipal Act*;
- (2) posters not be permitted on any privately-owned pole located on the boulevard;
- (3) posters be permitted only on utility poles located on a boulevard if:
 - (a) the utility pole is fitted with an approved collar;
 - (b) the poster is no larger than 22 centimetres by 28 centimetres and consists of lightweight cardboard or paper only;
 - (c) the poster is at least 100 metres from any other poster that conveys essentially identical information;
 - (d) the poster is securely attached flush to the surface of the collar using staples or removable tape;
 - (e) the poster is dated, showing the date of posting; and
 - (f) the poster is displayed for not more than 30 days or five days after the end of the advertised event, if any, whichever is earlier;
- (4) the purchase and installation of 2,000 collars be approved in principle;
- (5) the location and placement of all collars be determined by the Commissioner of Works and Emergency Services;
- (6) the Commissioner of Urban Development Services, the Commissioner of Works and Emergency Services, Toronto Hydro Corporation, the Toronto Transit Commission or their designates, be authorized to remove any poster or sign in the course of periodic cleaning or maintenance or where it is found that a poster or other sign is displayed in contravention of the by-law;
- (7) where a poster or sign is removed in accordance with the provisions of the by-law, any person responsible for erecting, attaching, placing or displaying, or causing or permitting the erecting, attaching, placing or displaying of the sign in contravention of the by-law be required to pay the City the greater of a per sign removal fee of \$60.00 or the actual cost of removal and disposal of the sign, and;
- (8) if, after a public meeting, the Planning and Transportation Committee finds it desirable to adopt the draft by-law, that the City Solicitor be authorized, once all collars have been installed, to prepare and introduce in Council a bill substantially in the form of the attached draft by-law.

Background:

At its meeting on October 2, 3 and 4, 2001, Council considered Clause 1 of Report Number 10 of the Planning and Transportation Committee headed "Harmonization of the Sign By-law Concerning Posters on Public Property, Including Signs on Utility Poles".

Council amended the clause to provide that:

- (1) Recommendations Nos. (3), (4) and (5) embodied in the confidential report dated September 5, 2001, from the City Solicitor, be adopted, such report to remain confidential in its entirety, in accordance with the provisions of the *Municipal Act*, having regard that it contains information related to litigation or potential litigation; and
- (2) the balance of the Clause, together with Recommendations Nos. (1) and (2) embodied in the confidential report dated September 5, 2001, from the City Solicitor, be struck out and referred back to the Commissioner of Urban Development Services, together with all communications and the following motion by Councillor Rae, with a request that she, in conjunction with the City Solicitor, submit a report to the Planning and Transportation Committee on:
 - (a) a review of the "Ramsden" decision regarding postering, to determine a minimum allowable level of postering which would meet the requirements of the decision;
 - (b) options to simplify the proposed by-law, including use of collars or kiosks;
 - (c) alternative enforcement strategies and cost recovery options;
 - (d) options to encourage and mobilize a public effort to remove illegal posters; and
 - (e) potential protection and support for groups and individuals who may remove illegal signs and posters:

Moved by Councillor Rae:

'WHEREAS the Bloor-Yorkville Business Improvement Area has installed over 200 decorative lamp posts on the City boulevards in their community; and

WHEREAS an expression of concern has been received from the Bloor-Yorkville Business Improvement Area concerning the possibility that the new by-law will permit posters to be placed on their privately-owned poles located on the City boulevard;

NOW THEREFORE BE IT RESOLVED THAT the draft by-law be amended, as necessary, to prohibit the placement of posters on any pole which is clearly identified as private property and owned by a local Business Improvement Area.'

Comments:

Review of “Ramsden” Decision to Determine a Minimum Allowable Level of Postering:

Council has asked staff to review the Ramsden v. Peterborough decision to determine a minimum allowable level of postering which would meet the requirements set out in that decision.

The Ramsden case involved a challenge to a municipal by-law that banned posters on all public property. The Supreme Court of Canada concluded that the absolute ban on postering on public property was an unreasonable limit on the right to freedom of expression protected under Section 2(b) of the Canadian Charter of Rights and Freedoms (the “Charter”) and was, therefore, unconstitutional.

Although the Court decided that an absolute ban on postering on public property is not justifiable, it suggested that some restrictions on postering could be legitimate alternatives to a total ban, including limits on location and size of posters and the length of time a poster might remain in any location. The Court was not asked to consider and did not express an opinion on a minimum allowable level of postering. It did indicate that any by-law restrictions must impair the right to expression as little as is reasonably possible.

In a more recent case, the Supreme Court indicated that law-making bodies should not be held to a standard of perfection in enacting laws that impair rights as little as possible. If a law falls within a range of reasonable alternatives, the courts will not strike it down merely because they can conceive of a less restrictive alternative.

As there has been only one reported case on postering since Ramsden, it is difficult to predict what degree of restriction a court would consider to be within a range of reasonable alternatives. In the mobile sign context, the Ontario Court of Appeal struck down a municipal by-law that effectively prohibited mobile signs subject to certain narrow exceptions. However, the Court upheld the mobile sign provisions of another municipality on the grounds that they were less restrictive and represented a rational attempt to strike a balance between the interests of the community (aesthetics, traffic safety) and the right of businesses to identify themselves and convey messages.

These cases, in conjunction with the Supreme Court’s recognition of postering as a “historically and politically significant form of expression”, suggest that the City should ensure that persons wishing to erect posters on public property have a fair opportunity to do so.

Community Bulletin Boards/Kiosks:

It is estimated that we would require at least 500 Community Bulletin Boards or Kiosks in order to provide persons wishing to erect posters on public property with a fair opportunity to do so. At an estimated cost of \$500.00 per unit, it is estimated that the total purchase cost would be in the

range of \$250,000.00 plus the cost of installation and maintenance, which would be much greater than collared poles.

Posting on Collared Utility Poles:

The purchase and placement of collars on specific poles offers the greatest opportunity to control the placement and cleaning of posting.

As a starting point, we would recommend the purchase and installation of 2,000 collars. The former City of Scarborough has approximately 500 collars currently in place. We would need to purchase and install an additional 2,000 collars. The cost of a collar is estimated to be \$30.00 each for a total of \$60,000.00. If additional collars are necessary, as would be determined by measuring the success of the initial installation, we will submit a further report to the Planning and Transportation Committee.

There will be a greater concentration/density of collars in areas where demand for posting is highest. Poles which could be used for collaring purposes would be identified by the Commissioner of Works and Emergency Services in consultation with Toronto Hydro Corporation. Any private poles located on the boulevard which are clearly marked as being owned and maintained by local Business Improvement Areas would be excluded as approved collaring locations.

We would recommend that posters be permitted on a utility pole provided that:

- (1) the utility pole is fitted with an approved collar;
- (2) the poster is no larger than 22 centimetres by 28 centimetres and consists of lightweight cardboard or paper only;
- (3) the poster is at least 100 metres from any other poster that conveys essentially identical information;
- (4) the poster is securely attached flush to the surface of the collar using staples or removable tape;
- (5) the poster is dated, showing the date of posting; and
- (6) the poster is displayed for not more than 30 days or five days after the end of the advertised event, if any, whichever is earlier.

The draft by-law allows the Commissioner of Urban Development Services, the Commissioner of Works and Emergency Services, Toronto Hydro Corporation, the Toronto Transit Commission or their designates, to remove any poster or sign in the course of periodic cleaning or maintenance or where it is found that a poster or other sign is displayed in contravention of the by-law.

The cost of a maintenance programme will be managed by the Commissioner of Works and Emergency Services and details of the full costs of this proposal will be reported on in detail to the Planning and Transportation Committee and the Budget Advisory Committee during the 2002 operating budget approval process.

We have attached a draft by-law to this report in the form described above.

Alternative Enforcement Strategies and Cost Recovery Options:

The only cost recovery possible under this programme would be the fee payable for the removal and disposal of signs displayed contrary to the provisions of the by-law.

Where a poster or sign is displayed in contravention of the by-law and we are able to identify the person responsible, that person would be required to pay the City the greater of a per sign removal fee of \$60.00 or the actual cost of removal and disposal of the sign.

Options to Encourage and Mobilize a Public Effort to Remove Illegal Posters:

Public involvement in the removal of illegal posters is not recommended. Injuries may occur in the process of removing signs and could, in some circumstances, lead to claims against the City. There is also potential for confrontation with persons erecting posters. Furthermore, members of the public may not have the knowledge necessary to distinguish legal from illegal signs and, if legal signs were removed, they could face civil liability. It is recommended that enforcement of the by-law, including removal of illegal signs, remain the responsibility of City staff who have been properly trained to carry out these duties.

Conclusions:

Collars placed on specific poles offer the greatest control of where posters can be placed at the lowest possible cost to the City. We recommend the purchase and installation of 2,000 collars, at a cost of \$60,000.00, adding to the 500 collars currently in place in the former City of Scarborough.

If additional collars are necessary, we will submit a further report to the Planning and Transportation Committee.

There will be a greater concentration/density of collars in areas where demand for posterizing is highest. Poles which could be used for collaring purposes would be identified by the Commissioner of Urban Development Services in consultation with the Commissioner of Works and Emergency Services and Toronto Hydro Corporation. Private poles that are owned by local Business Improvement Areas would be excluded as approved collaring locations.

In order to expand our enforcement capability, we are recommending that the Commissioner of Urban Development Services, the Commissioner of Works and Emergency Services, Toronto Hydro Corporation, the Toronto Transit Commission or their designates, be authorized to remove any poster or sign in the course of periodic cleaning or maintenance or where it is found that a poster or other sign is displayed in contravention of the by-law. Any poster or sign displayed in contravention of the by-law would be subject to removal and disposal at the expense of the person responsible.

If after a public meeting, the Planning and Transportation Committee finds it desirable to adopt the draft by-law, it is suggested that the City Solicitor be authorized, once all collars have been installed, to prepare and introduce in Council a bill substantially in the form of the attached draft by-law.

The format contained in the draft by-law has been reviewed and approved by Legal Services.

Contact:

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CITY OF TORONTO

Bill No.

BY-LAW No.

To regulate posterage on public highways and other City property.

WHEREAS Council may pass by-laws to regulate signs and other advertising devices pursuant to paragraphs 146 to 149 inclusive of section 210 of the Municipal Act; and

WHEREAS the City's by-laws with respect to posterage on City property need to be harmonized until such time as Council has enacted a comprehensive sign by-law;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Definitions

In this by-law, the following terms have the meanings indicated:

BOULEVARD - the untravelled portion of a highway, but does not include a sidewalk or a median.

COLLAR - a sleeve provided by the City and affixed to a utility pole to which posters may be attached in accordance with this by-law.

HIGHWAY - a highway as defined in section 1 of the *Municipal Act* that is under the jurisdiction of the City.

POSTER - a temporary notice of any kind, including but not limited to a notice, sign, advertisement, bill, handbill, leaflet, flyer or placard.

SIGN - any device, structure or medium that uses any colour, form, graphic, illumination, symbol or writing to convey information of any kind to the public, and includes a poster.

UTILITY POLE – includes a utility pole, light standard and a pole owned or controlled by the Toronto Transit Commission

2. Posters on public property; signs on utility poles

A. Except as authorized by by-law or by agreement with the City, no person shall erect, attach, place or display, or cause or permit to be erected, attached, placed or displayed, any poster on, over or to any structure or thing located on land owned by the City or any of its agencies, boards or commissions.

- B. Except as authorized by by-law, no person shall erect, attach, place or display, or cause or permit to be erected, attached, placed or displayed, any sign on or to a utility pole located within a highway.
- C. Despite Subsections A and B, a poster may be placed on a utility pole located on a boulevard if:
 - 1. The utility pole is fitted with an approved collar.
 - 2. The poster is no larger than 22 centimetres by 28 centimetres and consists of lightweight cardboard or paper only.
 - 3. The poster is at least 100 metres from any other poster that conveys essentially identical information.
 - 4. The poster is securely attached flush to the surface of the collar using staples or removable tape.
 - 5. The poster is dated, showing the date of posting.
 - 6. The poster is displayed for not more than 30 days or 5 days after the end of the advertised event, if any, whichever is earlier.
- D. Despite any other sign by-law, a poster that complies with Subsection C may be erected or displayed without a permit.

3. Removal of Signs

- A. The Commissioner of Urban Development Services, the Commissioner of Works and Emergency Services, Toronto Hydro Corporation, the Toronto Transit Commission or its delegates may, at any time and without notice, remove any poster or sign in the course of periodic cleaning or maintenance operations or where the poster or sign has been displayed contrary to the provisions of this by-law.
- B. Any sign removed under this section may be destroyed or otherwise disposed of by the person authorized to remove it without notice or compensation to any person who has an interest in the sign.
- C. Where an illegal sign has been removed under this section, any person responsible for erecting, attaching, placing or displaying, or causing or permitting the erecting, attaching, placing or displaying of the sign in contravention of this by-law shall, in addition to any fine or other penalty that may be imposed for an offence under this by-law, be required to pay to the City the greater of a per sign removal fee of \$60 or the actual cost of removal and disposal of the sign, and the City may recover this amount by legal action or in like manner as municipal taxes.

4. Offence

Every person who contravenes any provision of this article is guilty of an offence and on conviction is liable to a fine or other penalty under the *Provincial Offences Act*.

5. The following by-law provisions are repealed:

A. Section 9 of By-law No. 64-87, “For Prohibiting and Regulating the Erection of Signs and Other Advertising Devices”, as amended, of the former Borough of East York.

B. Sections 215-27, and 215-28 of Chapter 215, Signs, of the former City of Etobicoke Municipal Code, as amended.

C. Section 2.10 of By-law No. 30788, “A By-law to prohibit or regulate signs and other advertising devices.”, as amended, of the former City of North York.

D. The following provisions in Chapter 313, Streets and Sidewalks, of the former City of Toronto Municipal Code:

(1) Article XB.

(2) The following from Schedule A, at the end of Chapter 313:

(from column 1) (from column 2) (from column 3)

“§ 313-73.4C Removal of poster \$60.00* (per poster)”

E. Paragraph 2.2.3 of Schedule A to By-law No. 22980, “A By-law to prohibit and regulate signs in the City of Scarborough.”, as amended, (Scarborough Sign Code) of the former City of Scarborough.

F. By-law 11928, as amended by by-law 3296-79 of the former City of York

ENACTED AND PASSED this day of , A.D. 2002

Mayor

City Clerk