

## **Response to EX6.23 and Related Directives: Graphic Image Delivery and Display of Temporary Signs with Graphic or Disturbing Images**

**Date:** April 16, 2024

**To:** Economic and Community Development Committee

**From:** Executive Director, Municipal Licensing and Standards

**Wards:** All

### **SUMMARY**

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This report responds to Council directives related to regulating the unsolicited delivery of graphic flyers to residences and the feasibility of prohibiting and regulating temporary signs with graphic or disturbing images. This report also responds to Council direction to review whether an owner or occupant of a property should be authorized to erect advocacy signs in common areas or on the public boulevard without the consent of other owners and occupants of the same property.

Some residents receiving flyers with graphic images without their consent have reported that such flyers are harmful and distressing to view, especially for young children or people who have had miscarriages or abortions. When placing restrictions around content, however, staff are mindful of balancing the protection of persons' health, safety and well-being with enforcement considerations including Charter rights. Assessing what constitutes a "graphic" or "disturbing" image on a flyer or on a temporary sign such that it would be subject to enforcement action would be challenging and would vary based on the person viewing the image. As such, staff do not feel it is feasible to recommend by-law changes at this time.

Staff's recommendation considers mechanisms already available to residents to prevent the unsolicited delivery of graphic flyers. Further, the City's newly amended Chapter 693, Signs, Election, and Temporary regulates advocacy signs in a content-neutral manner, with requirements regarding the number, size, physical dimensions, and location. These new regulations attempt to strike a balance between residents' desire to express themselves, while minimizing clutter and preventing safety hazards.

Legal Services and Transportation Services have been consulted in the preparation of this report.

## RECOMMENDATIONS

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The Executive Director, Municipal Licensing and Standards recommends that:

1. The Economic and Community Development Committee receive this report for information.

## FINANCIAL IMPACT

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There are no current or known future year financial impacts arising from the recommendations contained in this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

## DECISION HISTORY

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At its meeting of July 19, 2023, City Council adopted [2023 EX6.23 - Graphic Image Delivery](#), directing Municipal Licensing and Standards (MLS) in consultation with the City Solicitor, to report to the April 2024 meeting of the Economic and Community Development Committee on regulating the unsolicited delivery of graphic images to residences, so that recipients have a choice whether they wish to view such images, similar to the London Ontario Disturbing Images by-law, and on the feasibility of prohibiting advocacy signs that display graphic or disturbing images.

At its meeting of June 14, 2023, City Council adopted [2023.EC4.6 - Temporary Signs By-law Review](#) amending Chapter 693, Signs, and requesting MLS to report on the feasibility of prohibiting advocacy signs that display graphic or disturbing images, or that contain messages that are forbidden by any federal, provincial or municipal law and whether an owner or occupant of a property should be authorized to erect advocacy signs in common areas or on the public boulevard without the consent of the other owners and occupants of the same property.

At its meeting of June 15, 2022, City Council adopted [MM45.22 - Prohibition and Regulation of Graphic Imagery Distributed to Private Residences and Displayed in the Public Realm](#), requesting MLS, Transportation Services, in consultation with the City Solicitor, to assess and report on options to prohibit the distribution of graphic imagery to private residences and regulate the display of graphic imagery in the public realm, based on the interventions proposed by other Canadian jurisdictions.

At its meeting of July 23, 2018, City Council adopted [MM44.35 - Use of Public Right of Way for Display of Graphic Images](#), requesting Transportation Services to review current by-laws designed to protect members of the public from harm, including Chapter 743, Streets and Sidewalks, Use of, to prevent the obstruction or interference with the public right-of-way by any group that uses the public right-of-way for the display graphic images and consider enforcement actions available.

At its meeting of December 5, 2017, City Council adopted [MM35.10 - Distribution and Display of Graphic Images](#), requesting MLS and Transportation Services, in consultation with the City Solicitor to assess options to regulate and prohibit extremely graphic material on print material delivered to residences and temporary signs on the public right-of-way.

## COMMENTS

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### Graphic Image Delivery to Private Residences

#### Background

As described in [2023.EX6.23](#), some residents have received flyers with anti-abortion images in their mailbox without their consent. These residents have reported that such flyers are harmful and distressing to view, especially for young children or people who have had miscarriages or abortions.

City Council directed MLS to report on regulating the unsolicited delivery of graphic images to residences, so that recipients have a choice whether they wish to view such images, similar to the London, Ontario Disturbing Images by-law.

#### City of Toronto Authority and Current State

Under Section 8 of the *City of Toronto Act, 2006*, the City has broad authority to pass by-laws related to the safety and well-being of persons and the protection of persons and property, including customer protection.

Currently, the City does not have by-laws that regulate print material delivered by hand to residences. Print material delivered through Canada Post falls under federal jurisdiction.

#### Canadian Charter of Rights and Freedoms

The City's by-laws and enforcement activity must comply with the *Canadian Charter of Rights and Freedoms*. If the City adopted a by-law regulating the delivery of graphic flyers with images showing or purporting to show a fetus, it may be found to infringe upon an individual's freedom of expression under Section 2(b) of the Charter. While the right to freedom of expression is a fundamental Charter right, it is not absolute. This means that it can be limited in certain circumstances. Accordingly, the City would have to show that an infringement was a reasonable limit on the right, including by demonstrating a pressing and substantive objective for the by-law; the limit must minimally impair the Charter right, and that the limit on the right was proportionate and rationally connected to achieving that objective.

#### Jurisdictional Research Findings

To date, the Ontario municipalities of London, St. Catharines, Burlington, and Woodstock, and the Alberta municipalities of Calgary, Okotoks, and Airdrie have adopted graphic image delivery by-laws. Hamilton and Oakville are considering the feasibility of adopting a similar graphic image delivery by-law.

Generally, municipalities that have adopted graphic image delivery by-laws cite the protection of health, safety, and well-being of persons as the purpose for regulating graphic image delivery. These by-laws include four key provisions:

- Graphic images are defined as images or photographs showing or purporting to show a fetus or any part of a fetus;
- Graphic images delivered to residences must be concealed in a sealed envelope or package;
- The envelope or package must include the name and address of the person or organization responsible for the delivery or the deliverer; and
- The envelope or package must include a warning label that the graphic image may be graphic, offensive, or disturbing to some people.

Graphic image delivery by-laws do not apply to print material delivered through Canada Post or delivered with the consent of the recipient. The Town of Okotoks specifically excludes their by-law from being applied to election mail, newspapers to paid subscribers, mail from provincial, federal, or municipal government, and elected officials.

At the provincial level, a private member's bill, *Bill 259, Viewer Discretion Act (Images of Fetuses)*, 2021, was introduced in the Legislative Assembly of Ontario on March 8, 2021, and provides that that no one shall send a graphic image of a fetus by mail or otherwise distribute such an image unless the image is contained in an opaque envelope. The exterior of the envelope shall clearly identify the sender and include a description of the contents within. The proposed fine for violating this prohibition is \$100 per image and does not specify who would be responsible for enforcement. This Bill did not move past first reading and was reintroduced as *Bill 80, Viewer's Discretion Act (Images of Fetuses)*, 2023, on March 20, 2023. Since then, Bill 80 has moved through first reading, but there is no information available at this time on whether it will move beyond this stage.

Notably, in February 2024, the Association of Reformed Political Action and other parties initiated litigation to challenge the City of St. Catharines' graphic image delivery by-law. MLS and Legal Services staff will monitor this case as it progresses.

Staff will continue to monitor the by-laws in London, St. Catharines and other jurisdictions both in terms of policy and enforcement approach as more information becomes publicly available.

### **Recommendation on Regulating the Delivery of Graphic Flyers with Images Showing or Purporting to Show a Fetus**

Staff assessed the legal, policy, and enforcement considerations with adopting a by-law, similar to the City of London's Graphic Image Delivery By-law, to regulate the delivery of graphic flyers with images showing or purporting to show a fetus. Based on this assessment, staff do not recommend that City Council adopt such a by-law.

A by-law regulating the delivery of graphic images showing or purporting to show a fetus has significant policy and enforcement challenges, including potential legal infringement

of an individual's freedom of expression. Graphic image delivery by-laws reviewed in other municipalities do not speak to other content that may be perceived as graphic or disturbing. Determining criteria to define whether an image is graphic or disturbing is challenging and would vary based on the individual viewing the image. In addition, and notwithstanding the enactment of the by-law, if graphic flyers were delivered anonymously, enforcement staff could be unable to prove who delivered or sent the flyer.

There are two existing methods and resources available to residents to help prevent the unsolicited delivery of graphic flyers. Property owners can prohibit individuals or organizations from entering their property to deliver unwanted print-material using the methods for notice under the provincial *Trespass to Property Act*, which is enforced by the Toronto Police Service (TPS).

Residents may also consider Canada Post's Consumer Choice Program to stop receiving unaddressed advertising mail by delivered by Canada Post. Under this Program, residents can place a note on their mailbox, community mailbox, group mailbox, or postal box, stating that they do not wish to receive unaddressed mail.

## **Display of Temporary Signs with Graphic or Disturbing Content**

### **Background**

As directed by City Council ([2023.EX6.23](#), [2023.EC4.6](#), [2022.MM45.22](#), [2018.MM44.35](#), [2017.MM35.10](#)), staff assessed the feasibility of prohibiting and regulating the display of temporary signs with graphic or disturbing images, including those displayed on the public's right-of-way. Council directives state that residents are alarmed, shocked, and distressed when exposed to graphic or disturbing imagery that is carried, held, and displayed in the public right-of-way.

### **Current State**

#### *Chapter 693, Signs*

Toronto Municipal Code, Chapter 693, Signs, regulates temporary signs that require a permit from MLS (such as A-Frame, Portable, and Mobile Signs) and signs that do not require a permit (such as Real Estate, Open House Directional, Garage Sale, and A-Frame and Portable signs displayed by a charity). The amended Chapter 693, Signs, Election and Temporary, effective on June 3, 2024 ([2023.EC4.6](#)), will add a new category of signs called advocacy signs, a sign type that advances a point of view and is not for a commercial purpose. The current and amended Chapter 693 contains content-neutral regulations, such as the number, physical dimensions, locations, and display period of temporary signs.

When Toronto's amended Chapter 693 comes into effect, advocacy signs must be placed on private property and may encroach on abutting public property only as necessary in circumstances specified in Chapter 693. Advocacy signs must also meet regulations related to the quantity and physical dimensions. These regulations balance residents' desire to express themselves with other municipal purposes, such as reducing clutter and ensuring public safety (e.g., preventing distractions or safety hazards for pedestrians and drivers).

The current and amended Chapter 693 does not regulate the content of temporary signs except that they are required to comply with all applicable City by-laws, federal, or provincial statutes or regulations. The Canada *Criminal Code* makes hate propaganda and the printing, publishing, distribution, and circulation of obscene pictures criminal offences, and is enforced by the TPS. The criminal prohibitions on hate propaganda and obscenity have been upheld as reasonable limits on an individual's Charter rights. When MLS receives a complaint about hate propaganda or obscenity displayed on a temporary sign, by-law enforcement officers (BEOs) consult with Legal staff and refer the matter to the TPS where appropriate. Conversely, when TPS contacts the City about a temporary sign with hate propaganda and obscenity, BEOs confirm through a site visit and refer to Transportation Services or Solid Waste Management Services for appropriate action.

#### *Chapter 743, Streets and Sidewalks, Use Of*

Chapter 743, section 743-9A of the Toronto Municipal Code states that no person shall obstruct, encumber, damage, foul, or cause or permit the obstructing, encumbering, damaging, or fouling of any street or install or place any unauthorized encroachment, object, article or thing, on, over, along, across, under, or in a street except as permitted under that chapter or any City By-law.

Chapter 743 does not regulate the content of temporary signs on the public-right-of-way. However, staff would consider enforcement action where safety hazards and accessibility issues occur on a public highway.

#### **Jurisdictional Research Findings**

No Canadian municipality prohibits or regulates graphic or disturbing images on temporary signs. Vancouver, Ottawa, Mississauga, Brampton, Hamilton, Richmond Hill, Pickering, Vaughan, and Halifax regulate the number, physical dimensions, and location of temporary signs, in a similar manner to Toronto.

The City of Calgary's Signs on Highways By-law also regulates advocacy signs by imposing rules on the size, location, and time requirements for advocacy messaging that "publicly expresses an opinion on an issue or cause" in a content-neutral manner similarly to the newly amended Chapter 693. Calgary's By-law prohibits a person from displaying or carrying a sign with advocacy messaging within 150 metres of a school boundary, larger than 3.5" by 5", during school days, and between hours of 7:30 a.m.-9:00 p.m. Any person found to be in violation of this by-law may be fined \$1,000. The objective of Calgary's by-law is to protect the safety of students, their caregivers, and school staff who may not want to be exposed to advocacy messaging. Notably, Calgary's regulations do not regulate messaging or differentiate between content, as all content is treated equally.

#### **Feasibility of Prohibiting and Regulating Temporary Signs with Graphic and Disturbing Images**

Staff assessed the feasibility of prohibiting and regulating temporary signs with graphic and disturbing images and are not recommending by-law changes due to legal, policy, and enforcement considerations.

The same Charter considerations described above for the delivery of graphic flyers would also apply to a by-law prohibiting or regulating temporary signs with graphic and disturbing images.

A prohibition on all temporary advocacy signs that are graphic or disturbing would be challenging to enforce due to the difficulty in determining criteria by which a sign is graphic or disturbing. The amended Chapter 693 prohibits temporary signs with hate propaganda and obscenity as they are prohibited under the Criminal Code and includes regulations on the number, location, and physical dimensions of signs. This amendment to Chapter 693 aims to strike a balance between the City protecting an individual's right to express themselves while prohibiting content that is not permitted under other applicable laws, minimizing the amount of clutter, and mitigating safety issues.

Staff also considered the feasibility of incorporating the Canadian Code of Advertising (“the Code”) into the amended Chapter 693 to establish standards for temporary sign content. Staff are not recommending by-law changes to incorporate the Code into the amended Chapter 693. The Code is administered by Advertising Standards Canada, a body representing both private and public advertisers. The Code has been used by public sector entities such as the Toronto Transit Commission and the Province of Ontario as a basis for accepting or rejecting advertisements on which may be placed on publicly-owned advertisement spaces. The Code is focused on advertising and its standards are written in that context. The requirements in the amended Chapter 693 are more appropriate because advocacy sign rules apply to signs used for non-commercial purposes.

The Code also creates a process where complaints of violations being made to independent bodies, which conduct reviews and adjudications on whether a violation of the Code has occurred. Introducing a Code-like system of standards and review would also contemplate City Council creating a similar decision-making entity that is independent of staff and Council, with knowledge of the Charter to review complaints or potential violations of the standards. Such a decision-making body would then be responsible for reviewing the content of a temporary sign, considering written submissions about the sign, and weighing it all against relevant Charter considerations.

This option has significant policy and enforcement challenges, including the difficulty of determining a standard to define what images are graphic or disturbing. Appointing an independent decision-maker to review all content-related complaints is resource intensive and may not achieve intended results within a timely manner. Due to the temporary nature of advocacy and other temporary signs, signs may be moved or removed by the time a complaint has been investigated and a decision has been made on the content.

#### **Response to EC4.6: Display of Advocacy Signs with Consent from Owners and Occupants of the Same or Abutting Properties**

In response to a directive contained in 2023.EC4.6, staff considered the feasibility of whether an owner or occupant of a property should be authorized to erect advocacy signs in common areas or the public boulevard without the consent of other owners and occupants of same or abutting property. The amended Chapter 693 requires that

advocacy signs be displayed with the consent of the owner or occupant(s) of the same property or the abutting private property.

The amended Chapter 693 allows advocacy signs to be placed on windows and balconies of private properties, provided that all other general requirements are met. This regulation provides greater flexibility to residents, especially those in living in multiplexes, to display advocacy signs while reducing clutter and protecting public safety.

The City recognizes that there may be circumstances where there may be disputes between residents about sign content in shared common areas. Staff encourage residents to consider undergoing community mediation services as one way to resolve disputes between individuals or groups, with a neutral third party serving as the mediator. As part of implementation of the amended Chapter 693, staff will update City webpages to include information about community mediation services offered by The Neighbourhood Group.

## **CONTACT**

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## **SIGNATURE**

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