

TO: Mayor Ed Holder and London City Councilors
FROM: Samuel Trosow
RE: City Council Agenda, March 22, 2022 (CPSC, Item 10, Distribution of Graphic Flyers)

I am writing to support the enactment of the by-law Regulating the Distribution of Graphic Flyers to Residential Properties that has been sent to you by the Community and Protective Services Committee (CPSC, 4th Report, Item 10 (4.3), March 1, 2022) coming before council on March 22, 2022.

This letter will be limited to two issues. First, the definition of “Graphic Images” in the by-law needs to be refined. And second, an additional finding regarding harm should be added to the recitals in the by-law.

Definition of “Graphic Images”

While there was discussion at the March 1 CPSC meeting about refining the definition of “Graphic Images,” the Appendix C by-law in the staff report contained the following:

“Graphic Image” means a detailed pictorial image or series of images, containing potentially sensitive content that may cause or trigger a negative reaction to the health and wellbeing of any person at any scale. An example of a graphic image may include, but is not limited to, dismembered human beings or aborted fetuses.

I would suggest it be replaced with the following definition:

“Graphic Image means a pictorial image or series of images containing, or purporting to contain, dismembered or aborted fetuses.”

The revised definition removes the language “potentially sensitive content that may cause or trigger a negative reaction to the health and wellbeing of any person at any scale,” as well as the words “human beings.”

Council should strive to craft a definition that captures the prohibited material in issue here but does so as narrowly and explicitly as possible. As the prohibition on the distribution of graphic images in the proposed by-law is a burden on section 2(b), in order to satisfy the requirements of section 1, it needs to be narrowly tailored and it should not be overbroad or vague. I believe removing this language accomplishes that purpose. It removes issues that could arise about what is “potentially sensitive” and whether it “may cause...” a negative reaction. It also removes issues concerning the definition of “human beings” which can be very contested and highly charged.

It also removes the **open-ended** language (“An example”...*“may include, but is not limited to”*) and replaces it with a more precise and **closed** definition. Inclusive language is typically used when the intention is to broaden rather than limit a definition. But here, the definition should be limited as much as possible since the measure is prohibitory, and Charter sensitive at that.

I would also add words to the effect of “or purporting to ...” because there is some question about the authenticity of the images.

Addition of Finding Regarding Harm Reduction

The CPSC held a public participation meeting where they heard numerous residents speak to the harm and distress caused by the unsolicited leaflets at their place of residence. This message had been previously conveyed to council from residents, but it was clearly articulated and amplified at this PPM. The resulting resolution contained the language:

“The Municipal Council received substantial evidence from Londoners that such unsolicited flyers cause demonstrable harm to London residents.”

This language should be directly included in the text of the by-law. It could be contained in an additional WHEREAS clause. Holding the PPM and following it with this legislative finding is a crucial step in the section 1 analysis because it goes directly to the city’s legitimate, harm-reduction based objectives in passing the measure.

Conclusion

The proposed by-law satisfies the requirements of Section 1 of the Charter. The limitation on expression is based on addressing a legitimate objective concerning demonstrable harm reduction. This point is on very solid grounds given the PPM as well as the findings based on this evidence. The by-law is rationally related to its objective, and with refinements to the definition of prohibited graphic images is neither arbitrary, vague nor overbroad. Given the nature of the harm that results from the unsolicited distribution of these leaflets in persons homes, there are no effective, realistic and enforceable alternatives, and finally, the limitations on expression are proportionate to the pressing and legitimate objectives that have been identified. In short the measure is reasonable and in the words of Section 1 is demonstrably justifiable in a free and democratic society,

Thank you for your continued attention to this important issue. The London community is looking forward to the passage of this long-awaited and much needed measure at your March 22 meeting.

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