

## Report to Community & Protective Services Committee

**To:** Chair and Members  
Community & Protective Services Committee

**From:** Tara Pollitt  
Deputy City Manager, Legal Services

Scott Mathers, MPA, P. Eng  
Deputy City Manager, Planning and Economic Development

**Subject:** Regulation of the Display of Graphic Images

**Date:** February 20, 2024

## Recommendation

That, on the recommendation of the Deputy City Manager, Legal Services, and the Deputy City Manager, Planning and Economic Development:

- (i) this report **BE RECEIVED** for information; and
- (ii) as per Council resolution of December 19, 2023, that a Public Participation Meeting **BE HELD** on March 18, 2024 with respect to the draft amendment to the Streets By-law attached as Schedule "A".

## Executive Summary

Council directed Civic Administration to prepare an amendment to the Streets By-law to regulate graphic images, and a Public Participation Meeting, by the end of Q1 2024. Council also directed Civic Administration to report back on potential changes to the Sign By-law related to the prohibition of the display of graphic images in public.

## Linkage to the Corporate Strategic Plan

The following report supports the Strategic Plan through the strategic focus area of well being and safety and well run City.

## Analysis

### 1.0 Previous Reports Pertinent to this Matter

There are no previous reports related to this matter.

### 2.0 Background Information

On August 2, 2022, Council resolved:

*The Civic Administration BE DIRECTED to report back to a future meeting of the Community and Protective Services Committee with respect to potential changes that could be made to the Sign By-law related to the prohibition of the display of graphic images in public; it being noted that the verbal delegation and communication, as appended to the Agenda, from D. Ronson, with respect to this matter, were received.*

On December 19, 2023, Council further resolved:

*That the Civic Administration BE DIRECTED to prepare a by-law amending the Streets By-law (S-1) to regulate the display of graphic images in the City of London with a report back at a future meeting of the Community and Protective Services Committee and a public participation meeting on the proposed by-law amendment by the end of Q1 2024; it being noted that the communications, as appended to the Added Agenda, from Councillors S. Trosow and H. McAlister and K. Dean, with respect to this matter, were received...*

### **3.0 Discussion and Considerations**

#### **Draft Amendments to Streets By-law – Council Resolution of December 19, 2023**

Council has directed Civic Administration to prepare an amending by-law to the Streets By-law. The draft by-law amending the Streets By-law (attached as Schedule “A”) has been drafted based on the wording in the communication appended to the December 19 2023 Added Agenda from Councillors Trosow and McAlister.

#### **Authority to Pass Municipal By-laws**

Generally speaking, municipalities have been given broad powers to pass by-laws. However, a by-law may be quashed for illegality under s. 273 of the *Municipal Act, 2001*, and caselaw has set out what may constitute “illegality” for the purposes of this section. Illegality under s. 273 encompasses a variety of municipal law grounds, including: violation of *Charter* rights; *ultra vires* (beyond legal authority), improper purpose, bad faith, or vagueness.<sup>a</sup>

#### **Charter Rights**

Rights of individuals are guaranteed under Canada’s *Charter of Rights and Freedoms*. A by-law regulating the display of signs on streets and highways may be subject to a Charter challenge where it is alleged that the by-law infringes rights guaranteed by the Charter (s. 2(b) freedom of expression). The City Council must be satisfied in enacting the by-law that it does not violate Charter rights; or, to the extent that there is some potential Charter infringement, that the means used by the City to achieve its objective are rationally connected to that objective, that there isn’t another way to achieve the same objective without violating anyone’s rights or freedoms, or violating them to a lesser degree, and that the City’s objective in enacting the by-law is significant enough to justify violating a Charter right (as per the *Oakes* test).

#### **Other Applicable Legislation – *Safe Access to Abortion Services Act, 2017***

The *Safe Access to Abortion Services Act, 2017* governs what can occur around an “access zone” (aka “bubble zones”) for clinics that offer abortions. Under that Act, an “access zone” is established for clinics (listed in the Regulations) that consists of “the property on which the clinic is located and the area within 50 metres...from the boundaries of the property [or as prescribed in the regulations]”. Within an access zone, no person shall try to advise or persuade a person to refrain from accessing abortion services, or attempt to inform a person concerning issues related to abortion services by any means or perform an “act of disapproval concerning issues related to abortion services” (including oral, written or graphic means).

However, there is no “access zone” automatically created for facilities like hospitals; a request can be made to the Ministry of the Attorney General and the Ministry of Health and Long-Term Care, and will be considered on a case-by-case basis. Any person can make such a request, but if the hospital isn’t the entity making the request, the Ministry will give the hospital the opportunity to respond before creating an “access zone” by way of a Regulation. (This webpage provides steps on how to submit such a request: [Safe access zones | ontario.ca](https://www.ontario.ca/gov/topics/safe-access-to-abortion-services-act))

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<sup>a</sup> 2386240 *Ontario Inc. (c.o.b. Al-Omda Lounge) v. Mississauga (City)*, [2018] O.J. N. 3018.

## Amendments to the Sign By-law – Council Resolution of August 2, 2022

Civic Administration does not recommend changes to the Sign By-law with respect to the display of graphic images. The Sign By-law as drafted is “content neutral” in that the content of the signs are not regulated. Section 1.2.1 of the Sign By-law sets out the Scope of the By-law as follows: “This By-law regulates the location, size, number, construction, alteration, repair, and maintenance of all outdoor signs and signs visible from the exterior of premises, including signs located in windows. “Signage clutter” is the basis for regulating signs that are distractions for pedestrians or motorists. The content of protest or picket signs are not regulated under the Sign By-law.

### Municipal Scan

A number of municipalities were contacted to undertake a municipal scan on this matter. Although some municipalities have discussed this matter either internally or in a political setting, staff could not find any Ontario examples of by-laws to address this form of signage.

### City of Calgary Sign by-law

The City of Calgary recently amended its sign by-law to address advocacy signage. The regulation limits the size of signs related to advocacy to a certain size when the sign is within a certain distance (150m) of a school during school hours. The sign by-law amendment came into effect in October 2020. Since then, there have been 20 public complaints, and no violation tickets issued to date.

The following information is taken directly from the City of Calgary report ([Bylaws related to signage \(calgary.ca\)](#)):

#### *School Safe Zones Temporary Signs on Highways Bylaw (29M97) Amendment*

*The School Safe Zones Temporary Signs on Highways Bylaw (29M97) Amendment **restricts advocacy messaging on public streets near schools**, due to the harmful impact this messaging has on unwilling viewers. This bylaw amendment was created for the safety and protection of students, their caregivers, and school staff, who do not want to be exposed to this messaging while attending school.*

*The [Temporary Signs on Highways Bylaw](#) prohibits the placement of signs within playground and school zones and with the amendment, restricts advocacy messaging on public property within 150 metres of a school (if larger than 3.5” by 5” in size).*

*Advocacy messaging is defined in the bylaw as **messaging that publicly expresses an opinion on an issue or cause**. An advocacy group is defined as any group that promotes this type of messaging whether it be an external group or student group.*

*The bylaw restrictions do not impose a ban on advocacy messaging, but rather restrict the size of the sign within a 150 metre distance from the school, thereby mitigating the issue of unwanted messaging.*

*The bylaw does not apply to any activities within the school property, only to the public property around the school. Schools can give permission to advocacy messaging on school property. Students looking to hold demonstrations on school property can seek approval from their schools.*

#### *Enforcement and reporting*

*The School Safe Zones Bylaw Amendment carries a fine of \$1,000 for any person found to be displaying or carrying a sign with advocacy messaging:*

- Within 150 metres of the school boundary;*
- Larger than 3.5” by 5”;*
- During school days; and*

- *Between the hours of 7:30 a.m. - 9:00 p.m.*

*The bylaw will operate on a complaint basis – individuals or advocacy groups known or suspected to be engaging in this process near schools should be reported.*

### **How would a possible by-law amendment or new by-law be enforced?**

With the adoption of any new municipal by-law or larger amendment, the standard protocol has been a three-pronged approach:

- Engagement and education
- Encouraging voluntary compliance
- Enforcement if necessary based on officer discretion

The approach to any new or amended by-law to address this matter if approved by Council is to follow this protocol and have a very strong front-ended focus on engagement, education and communications. Normally after a new by-law or by-law amendment is passed by Council, Civic Administration submits an application to a Senior Regional Judge for a set fine order related to the prohibition in the by-law, and may recommend an amendment to the Administrative Monetary Penalty System (AMPS) By-law introducing short form wording and a penalty amount.

Standard operating procedures are utilized in response to complaints. Complainants may be required to submit a statement of facts in some cases to assist with the collection of evidence. Further, if penalties are issued, complainants may be required to attend a hearing and provide evidence. A similar process was previously led by MLEOs and the public with respect to charges under the Public Nuisance By-law for “unnecessarily interfere with another person’s use and enjoyment of the Public Place by using abusive or insulting language as a personal invective”. The evidence of the MLEOs and members of the public led to multiple convictions and substantial fines.

There could be challenges to enforcing this by-law on the following matters: responding to complaints when MLEOs are off duty (evenings, Sundays) or are engaged in other compliance matters; determining the identity of the offender; Officer Safety (attending a large demonstration could lead to the need for additional MLEO backup or possibly LPS attendance); and determining the location of the sign ( i.e.is the sign on the street as defined in the by-law or on private property).

## **Conclusion**

Council directed Civic Administration to report back on potential changes to the Sign By-law related to the prohibition of the display of graphic images in public. Subsequently, Council directed Civic Administration to prepare an amendment to the Streets By-law to regulate graphic images, and a Public Participation Meeting, by the end of Q1 2024. This report is in response to these directions. A summary of how the City of Calgary addressed this matter is also provided.

**Prepared by: Lynn Marshall  
Solicitor**

**Orest Katolyk  
Director, Municipal Compliance**

**Recommended by: Tara Pollitt  
Deputy City Manager, Legal Services**

**Scott Mathers  
Deputy City Manager, Planning and Economic  
Development**

### **Attachments.:**

- communications appended to the December 19 2023 Council Added Agenda from Councillors S. Trosow and H. McAlister;
- draft by-law amending the Streets By-law (attached as Schedule “A”)

## Community and Protective Services Committee, Added Agenda for December 5, 2023

### Draft motion for CPSC:

Civic Administration is directed to prepare a by-law amending the Streets By-Law (S-1) to regulate the display of graphic image in the City of London, report back to the CPSC, and schedule a Public Participation meeting on the proposed by-law amendment.

### An amendment to the Streets By-Law (S-1) to regulate the display of graphic images on the streets in the City of London.

#### Purpose

The purpose of this amendment is to regulate the public display of Graphic Images on the streets of the City of London so that recipients are not subjected to distressing, unwanted and distracting images.

#### Definitions

“**Display**” means to cause a Graphic Image to be publicly visible anywhere on a city street including the sidewalks and other public property.

“**Graphic Image**” means an image or photograph showing, or purporting to show, a fetus or any part of a fetus; (Note: This definition is the same as contained in the *Graphic Image Delivery By-Law*, PW 14).

#### Regulation of Displays

This By-law amends Part 2 (Prohibited Matters) to clarify that sections 2.1 (Street -obstructing-encumbering-injuring-fouling), section 2.6 (Public nuisance -upon street), section 2.8 (public travel-use – interference), section 2.9 (Notices- placards – posting-on street – prohibited) shall include the Display of Graphic Images.

Moved by: Hadleigh McAlister

Seconded by: Sam Trosow

SCHEDULE "A"

Bill No.  
2024

By-law No.

A By-law to amend By-law S-1 entitled  
"A by-law to provide for the Regulation  
of Streets"

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended ("*Municipal Act, 2001*") provides that a municipal power shall be exercised by by-law;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting the "Health, safety and well-being of persons" as well as by-laws for the "Protection of persons and property, including consumer protection";

AND WHEREAS the Council is satisfied that the unregulated public display of Graphic Images on the streets of the City of London, which subjects individuals to distressing, unwanted and distracting images, does cause harm;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Part 1 of the Streets By-law S-1 is amended by inserting the following new definition of "Display" after the definition of "City Engineer", as follows:

**Display - defined**

"Display" means to cause a Graphic Image to be publicly visible anywhere on a city street including the sidewalks and other public property.

2. Part 1 of the Streets By-law S-1 is amended by inserting the following new definition of "Graphic Image" after the definition of "Electric Personal Assistive Mobility Device", as follows:

**Graphic Image - defined**

"Graphic Image" means an image or photograph showing, or purporting to show, a fetus or any part of a fetus.

3. Part 2 of the Streets By-law S-1 is amended by adding a new section 2.15, as follows:

**2.15 Display of Graphic Image**

2.15.1 For greater certainty, for the purposes of section 2.1, the Display of a Graphic Image on a street shall be considered an obstruction of that street.

2.15.2 For greater certainty, for the purposes of section 2.6, the Display of a Graphic Image on a street shall be considered a public nuisance on that street.

2.15.3 For greater certainty, for the purposes of section 2.8, the Display of a Graphic Image on a street shall be considered an activity which interferes with public travel or use of a street.

2.15.4 For greater certainty, for the purposes of section 2.9, the Display of a Graphic Image on a street by means of posting the Graphic Image in or upon a street, shall be considered posting a notice, sticker, placard or advertisement in or upon a street.

4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on \_\_\_\_\_, 2024.

Josh Morgan  
Mayor

Michael Schulthess  
City Clerk

First reading –  
Second reading –  
Third reading –