

Public Report to Community & Protective Services

To: Chair and Members
Corporate Services Committee

From: Tara Pollitt, Deputy City Manager – Legal Services
Scott Mathers, MPA, P.Eng, Deputy City Manager –
Planning & Economic Development

Subject: Draft Advocacy Message Sign Bylaw

Date: July 15, 2024

Recommendation

That a Public Participation Meeting BE HELD at a future CPSC meeting with respect to the draft Advocacy Message Sign By-law, attached as Appendix “A”.

Executive Summary

Council directed Civic Administration to prepare a draft by-law with respect to the Regulation of the Display of Graphic Images. A draft by-law entitled “Advocacy Message Sign By-law” is attached as Appendix “A”, in response to Council’s direction.

Analysis

1.0 Background Information

1.1 Previous Reports Related to this Matter

- February 20, 2024, CPSC, [Regulation of the Display of Graphic Images](#)

1.2 Background

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...

Most recently, at its Council Meeting of March 5, 2024, Council resolved:

That the staff report, dated February 20, 2024, BE REFERRED back to the Civic Administration and the Civic Administration BE DIRECTED to bring forward a draft by-law with respect to the Regulation of the Display of Graphic Images to a future meeting of the Community and Protective Services Committee for consideration by the end of Q2 2024;

It being noted that the communications as appended to the Added Agenda, from J. Gunnarson, A. Polizogopoulos, A. Honner, M. McCann and J. Jeffs, with respect to this matter, were received.

2.0 Discussion and Considerations

Council has directed Civic Administration to bring forward a draft by-law with respect to the Regulation of the Display of Graphic Images. Attached as Appendix “A” is a draft “Advocacy Message Sign By-law”.

3.0 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.

4.0 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).

5.0 Draft By-law – Advocacy Message Sign By-law

The purpose of this draft By-law is to promote safety on City streets to reduce driver distraction and to maintain sight lines for drivers, and to reduce impeding the flow of pedestrian traffic: (i) by regulating the display of non-commercial, portable, temporary “Advocacy Message Signs”, otherwise known as protest signs, demonstration signs, or political signs, that are held (by hand, or affixed to a stick), or ‘worn’ by individuals (as sandwich boards and the like) generally during a protest or demonstration while on City streets; (ii) and by prohibiting the placing or resting of such Advocacy Message Signs on the sidewalk or boulevard.

The regulation of such signs in the draft by-law is content-neutral, and regulates the size of the signs, where the signs can be located, and prohibits the resting or placing of such signs on the Street.

Clear sight lines at urban intersections are important to facilitate eye contact between drivers, cyclists, and pedestrians to promote safe and effective movement by all users. The presence of obstructions such as signs near intersections may interfere with the ability of drivers to see pedestrians.

Signs located along the roadside contribute to increasing demands to the driving task and are considered to be a source of driver distraction drawing attention away from activities critical for the safe operation of a motor vehicle.

5.1 Draft By-law Regulations – Summary

Size: The size of Advocacy Message Signs is restricted to no greater than 0.69 square metres (7.5 square feet) in surface area on its face; 0.76 metres (2.5 feet) in horizontal width; 0.91 metres (3 feet) in vertical height; and 0.076 metres (3 inches) in depth.

Location: Advocacy Message Signs cannot be held:

- on a Roadway (that portion of a Street which is improved for the travel of motor vehicles) except with the express written permission of the City Engineer;
- within 3 metres (9.84 feet) of a Crosswalk. There is an exception if a person is using the Crosswalk to cross the Street, and the sign is not held in such a manner as to distract drivers, obstruct driver views, or to interfere with the Crosswalk by other pedestrians.

Additional Regulations: Advocacy Message Signs (and any supporting structures):

- cannot be placed or rested on a Street;
- cannot be left unattended on a Street;
- cannot obstruct the free use of the Street;
- cannot be affixed to any City property on a Street.

Enforcement: Signs (and supporting structures) that are placed or are resting on the Street can be removed by Enforcement Officers, and a storage fee imposed.

Maximum fine is \$10,000 for each offence, and \$50,000 for directors or officers of corporations.

Administrative Monetary Penalty can be imposed once the AMPs by-law is amended.

6.0 Enforcement Background

How would a 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 in accordance with [the Municipal Compliance Services Policy](#):

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

The approach to any new 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. Typically after a new by-law is passed by Council, Civic Administration sends an application to a Senior Regional Judge for a set fine order related to the prohibitions in the by-law. Additionally, Civic Administration 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 charges are laid, or administrative 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 referred this matter back to Civic Administration and directed Civic Administration to bring forward a draft by-law with respect to the Regulation of the Display of Graphic Images. This report is in response to these directions. A draft by-law entitled “Advocacy Message Sign By-law” is attached.

Prepared by: Lynn Marshall, Solicitor

Wade Jeffery, Acting Director – Municipal Compliance

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

Scott Mathers, Deputy City Manager, Planning and Economic Development

Appendix A – Draft Bylaw

Bill No.

By-Law No.

A by-law to regulate the display of Advocacy Message Signs on City Streets, including Sidewalks.

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", as well as by-laws respecting "Structures, including fences and signs";

AND WHEREAS it is desirable to regulate Advocacy Message Signs located on streets, including sidewalks and boulevards, to balance the need for signage and expression with safety and other public users of City streets;

AND WHEREAS it is desirable to regulate Advocacy Message Signs located on streets, including sidewalks and boulevards to balance the needs of other public users of streets, sidewalks, and boulevards, including pedestrians;

AND WHEREAS it is desirable to regulate Advocacy Message Signs located on streets, including sidewalks and boulevards to promote safety, including reducing distractions for drivers, and maintaining sight lines;

AND WHEREAS placing a sign on a sidewalk or boulevard can impede the flow of pedestrian traffic;

AND WHEREAS Part III of the *Municipal Act, 2001* provides for specific municipal powers with respect to highways;

AND WHEREAS section 63 of the *Municipal Act, 2001* provides that if a municipality passes a by-law for prohibiting or regulating the placing of an object on or near a highway, it may provide for the removal and impounding or restraining and immobilizing of any object placed on or near a highway in contravention of the by-law;

NOW THEREFORE the Council of the City of London enacts as follows:

1.0 Purpose

1.1 The purpose of this By-law is to promote safety on City streets to reduce driver distraction, and to reduce impeding the flow of pedestrian traffic, by regulating the display of non-commercial, portable, temporary "Advocacy Message Signs", otherwise known as protest signs or political signs, that are held, or 'worn' by individuals (as sandwich boards and the like) generally during a protest or demonstration while on City streets, and to prohibit the placing or resting of Advocacy Message Signs on the sidewalk or boulevard.

2.0 Definitions

2.1 In this By-law:

"Advocacy Message Sign" means a non-commercial portable sign that relates to a social or political issue;

"City" means The Corporation of the City of London;

“City Engineer” means the Deputy City Manager, Environment and Infrastructure, or their written designate;

“Crosswalk” means:

- (i) that part of a Street at an intersection that is included within the connections of the lateral lines of the Sidewalks on opposite sides of the Street measured from the curbs, or in the absence of curbs from the edges of the Roadway; or
- (ii) any portion of a Roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by signs, ~~school crossing signs~~ (as per Ontario Traffic Manual – Book 5 Regulatory Signs) or by lines or other markings on the surface thereof; or
- (iii) pedestrian crossovers as defined in the *Highway Traffic Act*, R.S.O 1990, c. H8;

“Enforcement Officer” includes a police officer with the London Police Service, a Municipal By-law Enforcement Officer, and a Municipal Compliance Officer;

“Hold” means entirely supported by an individual, whether by holding by hand or some other means; **“Held”** shall have a corresponding meaning;

“Owner” means the person responsible for the Advocacy Message Sign, including the person who owns it and the person displaying it;

“Roadway” means the portion of a Street which is improved for the travel of motor vehicles;

“Sidewalk” means any municipal walkway or road works for the accommodation of pedestrians on that portion of a Street between the curb line and the Street Line which is located outside a Roadway;

“Street” means a means a highway as defined in the *Municipal Act, 2001*, under the City’s jurisdiction, and includes the Roadway, Sidewalk, boulevard, and any City land between the curb line or edges of the Roadway and Street Line;

“Street Line” means the boundary between the Street and the abutting land.

3.0 Exemptions

3.1 This By-law shall not apply to posters affixed to a poster panel on a designated light standard as set out in the City’s Sign by-law, to election signs, to flyers, nor to handbills.

4.0 Regulations – General

4.1 No person shall Hold an Advocacy Message Sign on a Street except in accordance with this By-law.

4.2 No person shall Hold an Advocacy Message Sign on a Street if it obstructs the free use of the Street.

4.3 No person shall Hold an Advocacy Message Sign on a Roadway except with the express written permission of the City Engineer.

4.4 No person shall place or rest on a Street an Advocacy Message Sign, or any structure that supports an Advocacy Message Sign.

4.5 No person shall leave unattended on a Street an Advocacy Message Sign, or any structure that supports an Advocacy Message Sign.

4.6 No person shall affix to any City property on a Street an Advocacy Message Sign, or any structure that supports an Advocacy Message Sign.

4.7 No person shall Hold an Advocacy Message Sign on a Street that is greater than any one or more of the following dimensions:

- (i) 0.69 square metres (7.5 square feet) in surface area on its face; or
- (ii) 0.76 metre (2.5 feet) in horizontal width; or
- (iii) 0.91 metres (3 feet) in vertical height; or
- (iv) .076 metres (3 inches) in depth.

4.8 (a) No person shall Hold an Advocacy Message Sign within 3 metres (9.84 feet) of a Crosswalk.

(b) Subsection 4.8(a) is not applicable if a person is using the Crosswalk to cross the Street, and the Advocacy Message Sign is not Held in such a manner as to distract drivers, obstruct driver views, or to interfere with use of the Crosswalk by other pedestrians.

5.0 Enforcement

5.1 This By-law may be enforced by an Enforcement Officer.

5.2 No person shall hinder or obstruct or attempt to hinder or obstruct an Enforcement Officer in the discharge of duties under this By-law.

5.3 Removal of Objects Placed on the Street:

(a) An Enforcement Officer may remove, impound, restrain, or immobilize any Advocacy Message Sign or supporting structure placed or resting on the Street in contravention of this By-law.

(b) If there is a person responsible for the Advocacy Message Sign or supporting structure in contravention of this By-law, the Enforcement Officer authorized to cause the removal of the Advocacy Message Sign or supporting structure shall produce appropriate identification and inform the person in charge of the By-law contravention.

(c) If there is a person responsible for the Advocacy Message Sign or supporting structure in contravention of the By-law, the Enforcement Officer authorized to cause the removal of the Advocacy Message Sign or supporting structure shall give a receipt to that person with respect to the removed objects.

(d) All costs and charges for the removal, care and storage of the Advocacy Message Sign or supporting structure are a lien upon them which may be enforced by the City in the manner provided by the *Repair and Storage Liens Act*, as amended.

(e) An Advocacy Message Sign or supporting structure removed shall be stored by the City for a period not less than 60 days, during which 60-day period the person responsible for them may be entitled to redeem them upon producing appropriate identification, upon signing an acknowledgement and release on a required form, and upon payment satisfactory to the City Treasurer of fees and charges for the following:

- (i) a fee for the manual removal of the Advocacy Message Sign or supporting structure;
- (ii) a fee for the removal of an object that cannot be removed manually, plus the cost of any special equipment required for removal;
- (iii) a storage fee per day or part thereof.

(f) An Advocacy Message Sign or supporting structure removed and stored and not claimed by the Owner within 60 days of their removal is the property of the City, and the Advocacy Message Sign or supporting structure may be sold or destroyed, and the proceeds of any sale shall form part of the City's general funds.

5.4 Imperial measurements are provided solely for convenience. In the event of a conflict between the metric and imperial measurements provided in this By-law, the metric measurements shall prevail.

6.0 Offences

6.1 Any person who contravenes a provision of this By-law is guilty of an offence and on conviction is liable to a fine of no more than \$10,000 for each offence.

6.2 A director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence and on conviction is liable to a fine of no more than \$50,000.

6.3 Each person who contravenes a provision of this By-law shall, upon issuance of a penalty notice in accordance with the Administrative Monetary Penalty System By-law, be liable to pay the City an Administrative Monetary Penalty.

7.0 Short Title

7.1 This by-law may be referred to as the “Advocacy Message Sign By-law”.

8.0 Force and Effect

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

PASSED in Open Council on [month][day], 2024, subject to the provisions of PART VI.1 of the Municipal Act, 2001.

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First Reading -
Second Reading -
Third Reading -