

Report to Community & Protective Services Committee

To: Chair and Members
Community & Protective Services Committee

From: Barry Card, Deputy City Manager, Legal Services

Subject: Flyer Deliveries to Residential Properties

Date: September 21, 2021

Recommendation

On the recommendation of the Deputy City Manager, Legal Services, this report BE RECEIVED for information.

Executive Summary

The courts have confirmed that for a municipal by-law to be valid, it must have a valid municipal purpose. In addition, any steps taken by the municipality that infringe on *Charter* rights may be subject to a successful *Charter* challenge.

The cities of Ottawa, Calgary, Halifax and Winnipeg have passed by-laws regulating the distribution of flyers (no matter the content) on residential property. A draft by-law is attached as Schedule "A".

Hamilton, Oakville and Oshawa passed resolutions requesting the assistance of the Federal and Provincial governments, either to consider enacting legislation regarding the use of graphic images, or requesting their advice on *Charter* matters.

Analysis

1.0 Previous Reports Pertinent to this Matter

N/A

2.0 Background Information

Council resolution of November 10, 2020 stated (in part):

That the following actions be taken with respect to graphic, unsolicited flyer deliveries to residential properties:

- a) *the Civic Administration BE DIRECTED to investigate options to address community concerns around graphic, unsolicited flyer deliveries to residential properties and report back to a future meeting of the Community and Protective Services Committee, outlining information and options including, but not limited to:*
- i) steps taken by other municipalities with respect to this matter; and,*
 - ii) potential amendments to the existing municipal nuisance by-law or introduction of a new by-law with respect to this matter;*

Municipal purpose

The courts have confirmed that for a municipal by-law to be valid, it must have a valid municipal purpose.

Charter Rights

Rights of individuals are guaranteed under Canada's *Charter of Rights and Freedoms*. A by-law regulating delivery of flyers may be subject to a *Charter* challenge where it is alleged that the by-law infringes rights guaranteed by the *Charter*. 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.

3.0 Discussion and Considerations

3.1 What Other Jurisdictions Have Done

(1) City of Hamilton (resolution)

The City of Hamilton did not pass a by-law, but instead [passed a resolution](#) requesting the Government of Canada and the Province of Ontario to consider enacting legislation dealing with advertising and communication to prevent the use of graphic, gruesome and disturbing images of aborted fetuses as part of any Anti-Abortion or Pro-Life campaign at least to the extent that such images are shielded from children and other vulnerable persons.

(2) City of Oshawa (resolution)

The City of Oshawa did not pass a by-law, but instead [passed a resolution](#) requesting advice on the *Charter* be sent to the Minister of Justice and Attorney General of Canada and the Attorney General of Ontario, and further that the communications received by council members and staff be forwarded to the Department of Justice Canada and the Ministry of the Attorney General for inclusion in *Charter* discussions.

(3) Town of Oakville (resolution)

The [Town of Oakville](#) (at its meeting on August 7, 2018) requested a further report from staff on the matter, but also resolved to have the Mayor send a letter to the Hon. Caroline Mulroney, Attorney General, and having the Mayor urge the Province of Ontario to limit and regulate the display and distribution of posters, signs and leaflets that contain disturbing images. Further, that the Mayor, on Council's behalf, write the Minister of Justice of Canada urging the consideration of amendments to the Obscene Publication provisions of the Criminal Code.

(4) City of Ottawa (by-law)

The City of Ottawa passed a By-law for a ["Voluntary Admail Reduction Program"](#). It was formerly called "No Junk Mail Program", passed in 1997. It is to be noted that this by-law was not passed in response to any perceived disturbing content, but was passed in response to a perceived litter issue and "junk mail". This by-law states that any owner or occupant of a property may participate in this program by purchasing a sticker which indicates their desire not to receive unaddressed advertising material. The sticker is to be affixed to the mail slot or mail box. A distributor is not to distribute any unaddressed advertising material on private property if the owner has a prescribed 'no junk mail' sticker clearly displayed. This by-law contains no enforcement or penalty sections, and was implemented based on voluntary compliance.

The by-law regulates the distribution of unaddressed advertising material in a content-neutral manner; the by-law applies to all unaddressed advertising material no matter what the content of the flyers is (with certain exemptions for community newspapers, newspaper delivered to paid subscribers, election campaign material, and information circulars produced by governments/agencies). It is to be noted that the provisions of the By-law were directed at advertising material for commercial purposes.

(5) City of Calgary (by-law)

In [2016 the City of Calgary modified measures in its Community Standards By-law](#) to prohibit depositing a flyer (whether or not commercial in nature) at premises where a sign

or notice has been posted indicating that flyers are not wanted. This by-law is very similar to the City of Ottawa by-law, but does have a penalty provision, and does not prescribe a specific sign.

The by-law regulates the depositing of flyers in a content-neutral manner; the by-law applies to all flyers no matter what the content is (with certain exemptions for legal election advertising, newspapers to paid subscribers, community association newsletters, government/agency information circulars). The by-law establishes penalties for failing to comply.

(6) Halifax Regional Municipality (by-law)

Halifax Regional Municipality passed a "[Flyer Distribution By-law](#)" in 2019. This by-law is very similar to the City of Ottawa by-law, but does have a penalty provision. The by-law No Flyer sign can be one provided by the municipality, or one that meets the criteria in the by-law. The reported purpose of the by-law was to prevent litter and promote proper waste management. Like the Ottawa By-law, the by-law regulates flyer distribution in a content-neutral manner (with some exceptions for lawful election advertising, newspapers for paid subscribers, community association newsletters or newspaper that do not contain flyers, and information circulars produced by a level of government/agency). The extensive report can be found here:

<https://www.halifax.ca/sites/default/files/documents/city-hall/standing-committees/180405essc1211.pdf>

(7) City of Winnipeg (by-law)

The [City of Winnipeg](#) regulates the delivery of "handbills" on residential property by prohibiting such delivery if there is a sign indicating handbills are not wanted, or if the occupant indicates they aren't wanted, or if the property is vacant.

3.2 Draft By-law

The draft by-law attached as Schedule "A" is similar to those enacted by other jurisdictions and appears to be objectively related and proportional to the problems associated with the behavior addressed by the by-law.

The draft by-law regulates the depositing of unaddressed flyers in a content-neutral manner; the draft by-law applies to all unaddressed flyers no matter what the content is (with certain exemptions for legal election advertising, newspapers to paid subscribers, community association newsletters, government/agency information circulars); the draft by-law gives residents the choice whether they wish to display a sign indicating NO FLYERS or NO JUNK MAIL.

The draft by-law does not prescribe a specific sign, but requires that the sign be clearly visible posted on a mail box, mail slot, or at the property entrance stating "NO FLYERS" or "NO JUNK MAIL". The draft by-law does not establish penalties for failing to comply, taking the Ottawa approach of voluntary compliance.

3.3 Municipal Compliance

The Director, Municipal Compliance advises the following:

"With the adoption of any new municipal by-law, the standard protocol has been a three-pronged approach: education, voluntary compliance and enforcement based on officer discretion. The approach to this by-law, if approved by Council, will 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 related to the prohibition noted in the by-law or recommends an amendment to the Administrative Monetary Penalty System (AMPS) introducing short form wording and a penalty amount. In this instance, the fine and/or penalty process will not be implemented as this by-law is based on voluntary compliance. After an initial focus on engagement and communications, staff will monitor the level of voluntary compliance and will communicate with any flyer distributors or other groups where repeated noncompliance is reported. If voluntary compliance is not

achieving the goal and objectives of this by-law, Civic Administration will report back on alternative compliance options including the possibility of fines and or penalties.”

3.4 Additional Information

No Junk Mail Stickers – Canada Post

Individuals currently have the ability to post “NO JUNK MAIL” or “NO FLYERS” stickers on their mailboxes. Further, Canada Post will stop delivering unaddressed advertising if a note is placed on a mailbox.

(see: <https://www.canadapost-postescanada.ca/cpc/en/support/kb/receiving/mail-delivery/how-to-stop-receiving-advertising-mail>).

Trespass to Property Act

Individuals who do not wish to receive various kinds of flyers may consider their private property rights, including the *Trespass to Property Act*. This would be a private property matter between the parties involved not requiring municipal government involvement.

City of Toronto

The City of Toronto adopted [a Motion on December 5, 2017](#) directing Civic Administration to assess options to “regulate the distribution of print materials to private residences that contain extremely graphic images intended to shock, alarm, or cause dismay, including the potential for the prohibiting of the distribution of such print materials to private residences, for the purposes of addressing the potential of such displays to cause harm to members of the public, especially children...”. We were unable to locate a report addressing this item.

The [City of Toronto website](#) states “If you wish to make a complaint about offensive or graphic flyers or pamphlets delivered to your mailbox, please contact Advertising Standards Canada at the link below.” That complaint process can be found here: <https://adstandards.ca/complaints/>.

Town of Airdrie

The Town of Airdrie, Alberta is reported not to have passed a proposed graphic images by-law. (see: <https://discoverairdrie.com/local/graphic-images-bylaw-scrapped-by-city-council>).

The article states “Because of the difficulty of directly dealing with the distribution of graphic images, the proposed bylaw didn’t directly target graphic images and instead targeted flyers in general. It’s part of the reason Mayor Peter Brown and Council decided to defeat the by-law.”.

Provincial Bill 259, View Discretion Act (Images of Fetuses), 2021

On March 8, 2021, Bill 259, [Viewer Discretion Act \(Images of Fetuses\), 2021](#), received its First Reading and is not law. This is a private members’ bill. This Bill provides 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 includes a description of the contents and the exterior of the envelope clearly identifies the sender. The penalty for violating this prohibition is a fine of \$100 per image.

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Solicitor
Recommended by: Barry Card
Deputy City Manager, Legal Services

Attachment: Schedule “A” – Draft By-law
cc. Orest Katolyk, Director, Municipal Compliance

SCHEDULE "A" - Draft By-law

Bill No.
2021

By-law No.

A by-law establishing a voluntary program to regulate the distribution of flyers in the City of London.

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 8(2) of the *Municipal Act, 2001* provides that in the event of ambiguity in whether or not a municipality has the authority to pass a by-law under s. 10, the ambiguity shall be resolved so as to include, rather than exclude, municipal powers that existed on December 31, 2002;

AND WHEREAS subsection 8(3) of the *Municipal Act, 2001* provides that a by-law under section 10 respecting a matter may regulate or prohibit respecting the matter, require persons to do things respecting the matter, provide for a system of licenses (including permits, approvals, registrations and any other type of permission) respecting the matter;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001* or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality, including respecting climate change; and, in paragraph 8, Protection of persons and property;

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

Part 1 SHORT TITLE

Short Title

- 1.1 The short title of this by-law is the Voluntary Program Regulating Distribution of Flyers By-law.

Part 2 DEFINITIONS

Definitions

- 2.1 For the purposes of this By-law:

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

"Distributor" means any person, owner of a business, company, or organization which distributes, permits to be distributed or causes to be distributed any Flyer which promotes the distributor's activities;

"Flyer" means any printed or written matter, and includes a circular, leaflet, pamphlet, paper, booklet, postcard, or any other printed or otherwise reproduced matter of literature, but not including electronic messages;

"Person" includes a corporation, other legal entities and an individual having charge or

control of a Property;

“Property” means residential property.

Part 3 PROGRAM ESTABLISHED

3.1 A voluntary program for the regulation of the distribution of unaddressed Flyers in the City of London is established.

3.2 Any owner or occupant of Property may participate in this program and indicate their desire not to receive unaddressed Flyers by placing a sign stating “NO FLYERS” or “NO JUNK MAIL” on their mail box, mail slot, or in a location clearly visible at the Property entrance.

Part 4 PROHIBITIONS

Flyers – Person

4.1 No Person shall deposit an unaddressed Flyer at a Property if there is a clearly visible sign posted on the mail box, mail slot, or at the Property entrance stating “NO FLYERS” or “NO JUNK MAIL”.

Flyers – Distributor

4.2 No Distributor shall distribute or cause to be distributed an unaddressed Flyer at a Property if there is a clearly visible sign posted on the mail box, mail slot, or at the Property entrance stating “NO FLYERS” or “NO JUNK MAIL”.

Exceptions

4.3 Sections 4.1 and 4.2 do not apply to any of the following:

- (a) community newspapers;
- (b) mailings in the public interest from government departments or agencies at the Federal, Provincial, municipal levels and band councils;
- (c) materials from Elections Canada, provincial election officials, and municipal election officials, and material from political parties and electoral candidates during an election;
- (d) any addressed mail, including addressed advertising materials;
- (e) newspapers delivered to subscribers.

Part 5 MISCELLANEOUS

Administration

5.1 The Director, Municipal Compliance is responsible for the administration of the By-law.

Effective date

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

PASSED in Open Council on .

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading –