

Report to Community & Protective Services Committee

To: CHAIR AND MEMBERS
COMMUNITY AND PROTECTIVE SERVICES COMMITTEE
From: SCOTT MATHERS, MPA, P. ENG, DEPUTY CITY MANAGER,
PLANNING AND ECONOMIC DEVELOPMENT
Subject: DRAFT BY-LAWS: PROGRAM REGULATING DISTRIBUTION
OF FLYERS BY-LAW AND DISTRIBUTION OF GRAPHIC FLYERS TO
RESIDENTIAL PROPERTIES BY-LAW
Date: MARCH 1, 2022

Recommendation

That, on the recommendation of the Deputy City Manager, Planning and Economic Development, the following actions be taken with respect to the Program Regulating Distribution of Flyers and Distribution of Graphic Flyer Deliveries to Residential Properties:

- a) the attached proposed by-law (Appendix 'A') **BE RECIEVED**, it being noted that the intent of the By-law would implement a program regulating the distribution of flyers to residential premises;
- b) the attached proposed by-law (Appendix 'B') **BE RECIEVED**, it being noted that the intent of the amendment would introduce penalties for non-compliance of by-law regulations related to the Program Regulating Distribution of Flyers By-law;
- c) the attached proposed by-law (Appendix 'C') **BE RECIEVED**, it being noted that the intent of the By-law would regulate the distribution of graphic flyers to residential properties ;
- d) the attached proposed by-law (Appendix 'D') **BE RECIEVED**, it being noted that the intent of the amendment would introduce penalties for non-compliance of by-law regulations related to the Distribution of Graphic Flyers to Residential Properties Bylaw.

Executive Summary

The proposed draft by-laws and associated penalty provisions contained in this report is in response to Council direction of November 17, 2021. The draft bylaw in Appendix "A" provides residential property occupants the option to request that all forms of flyers not be delivered to their residence. The draft bylaw in Appendix "C" is prescriptive prohibiting the delivery of graphic flyers to residential premises.

Analysis

1.0 Previous Reports Pertinent to this Matter

Community and Protective Services Committee (CPSC) September 21, 2021, Information Report: Flyer Deliveries to Residential Properties.

Community and Protective Services Committee (CPSC) November 2, 2021, Flyer Deliveries to Residential Properties; Public Participation Meeting.

2.0 Background Information

On November 17, 2021, Municipal Council resolved:

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

- a) the draft by-law, as appended to the staff report dated September 21, 2021, with respect to Flyer Deliveries to Residential Properties **BE REFERRED** back to the Civic Administration for revisions that include enforcement measures in cases where compliance is not respected;

b) that Civic Administration **BE DIRECTED** to prepare an alternate draft by-law for consideration of Municipal Council, specific to the distribution of graphic flyers, that would incorporate the following measures;

i) to specifically regulate flyers containing graphic images of dismembered human beings or aborted fetuses to residences;

ii) to identified sources of municipal authority supporting the above-noted measure, [10(2) powers]; and,

iii) to include provisions providing for enforcement and penalties for violations of the by-law;

it being noted that the Municipal Council received substantial evidence from Londoners that such unsolicited flyers cause demonstrable harm to London residents.

3.0 Discussion and Considerations

3.1 Program Regulating Distribution of Flyers By-law.

In response to part (a) of the Council Resolution, a revised draft of the Program Regulating Distribution of Flyers By-law is provided (refer to Appendix A). The revised draft by-law includes offence provisions referencing Administrative Monetary Penalties (AMP) (refer to Appendix B). The proposed AMP penalty amount for non-compliance is \$75. The penalty could also be doubled for repeat offences. All by-law offences are also subject to the issuance of a summons (Part III) whereby the matter is resolved in court.

3.2 Graphic Flyers

In response to part (b) of the Council Resolution, a draft of the Distribution of Graphic Flyers By-law is provided, (refer to Appendix C).

Subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: health, safety, and wellbeing of persons (10 (2) 6) and protection of persons and property, including consumer protection (10 (2) 8). These provisions may serve as a municipal purpose of the attached draft by-law.

The draft by-law contains a definition of Graphic Image: “A detailed pictorial image 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.”

The draft by-law includes offence provisions and references Administrative Monetary Penalties (AMPs) (Refer to Appendix D). The proposed AMP penalty amount for non-compliance is \$350. The penalty could also be doubled for repeat offences. All by-law offences are also subject to the issuance of a summons (Part III) whereby the matter is resolved in court.

With the adoption of any new municipal by-law, the standard protocol has been a three-pronged approach, incorporating officer discretion: education, voluntary compliance, and enforcement when necessary to achieve compliance. The approach to these by-laws, if approved by Council, will have a very strong front-ended focus on engagement, education, and communications. Standard operating procedures will be 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. Charges may be issued to the person distributing the flyers as well as the distributor.

4.0 Conclusions

The draft by-laws contained in this report are in response to Council direction. Both drafts contain offence provisions and associated penalty provisions.

Prepared by: Orest Katolyk, MLEO (C), Director, Municipal Compliance
Recommended by: Scott Mathers, MPA, P. Eng, Deputy City Manager,
Planning and Economic Development

APPENDIX “A”
Draft By-law
Program Regulating Distribution of Flyers By-law

Bill No. _____
2022

By-law No. _____

A by-law establishing a 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 a municipality has the authority to pass a by-law under s.10, the ambiguity shall be resolved 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 Program Regulating Distribution of Flyers By-law.

Part 2 DEFINITIONS

Definitions

2.1 For the purposes of this By-law:

“Addressed Flyer” means a Flyer bearing the name, address and postal code of the Property occupant;

“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;

“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 program for the distribution of Flyers in the City of London is established.

3.2 Any owner or occupant of Property may choose to participate in this program and indicate their desire not to receive certain Flyers by placing a sign stating “NO FLYERS” or “NO JUNK MAIL” or “NO UNSOLICITED MAIL” or similar wording on their mail box, mail slot, or in a location clearly visible at the Property entrance. See section 4.3 for exceptions.

Part 4 PROHIBITIONS

Flyers – Person

4.1 Subject to section 4.3, no person shall deposit a Flyer at a Property if there is a clearly visible sign posted on the mailbox, mail slot, or at the Property entrance stating “NO FLYERS” or “NO JUNK MAIL” or “NO UNSOLICITED MAIL” or similar wording.

Flyers – Distributor

4.2 Subject to section 4.3, no Distributor shall distribute or cause to be distributed a Flyer at a Property if there is a clearly visible sign posted on the mailbox, mail slot, or at the Property entrance stating “NO FLYERS” or “NO JUNK MAIL” or “NO UNSOLICITED MAIL” or similar wording.

Exceptions

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

- (a) community newspapers or subscription 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) anything delivered by Canada Post;
- (e) addressed Flyers.

Part 5 ENFORCEMENT

5.1 Any person who contravenes any provision of this By-law is guilty of an offence.

5.2 A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.

5.3 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with the Administrative Monetary Penalty System By-law A-54, be liable to pay the City an Administrative Monetary Penalty.

5.4 A person convicted under this by-law is liable to a maximum fine of \$5000.00.

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

PASSED in Open Council on , 2022

Ed Holder
Mayor

Michael Schulthess
City Clerk

First Reading – , 2022
Second Reading – , 2022
Third Reading – , 2022

APPENDIX "B"

Bill No. _____
2022

By-law No. A-54-_____

A by-law to amend By-law No. A-54, as amended, being "A by-law to implement an Administrative Monetary Penalty System in London" to designate the Program Regulating Distribution of Flyers By-law.

WHEREAS section 434.1 of the Municipal Act authorizes the City to require a person, subject to conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality;

AND WHEREAS the Municipal Council considers it desirable to enforce and seek compliance with the designated by-laws, or portions of those by-laws, through the Administrative Monetary Penalty System;

AND WHEREAS the Municipal Council on June 25, 2019 passed By-law No. A-54, being "A by-law to implement an Administrative Monetary Penalty System in London;"

AND WHEREAS the Municipal Council deems it appropriate to amend Bylaw No. A-54 with respect to contraventions of the By-law establishing a program to regulate the distribution of flyers in the City of London;

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

1. That Schedule "A-1" of By-law No. A-54 be amended to include the Program Regulating Distribution of Flyers By-law.
2. That the definition of "Administrative Penalty" be amended to add "A-(to be inserted by Clerks)" after "A-(to be inserted by Clerks)";
3. That section 2.1 be amended to add "A-(to be inserted by Clerks)" "A-(to be inserted by Clerks)";
4. That section 3.1 be amended to add "A-(to be inserted by Clerks)" after "A-(to be inserted by Clerks)";
5. That section 3.1a) be amended to add "A-(to be inserted by Clerks)" after "A-(to be inserted by Clerks)";
6. That the attached schedule "A-(to be inserted by Clerks)" Program Regulating Distribution of Flyers By-law be added to By-law No. A-54 to provide for a penalty schedule.

Schedule "A-(to be inserted by Clerks)"

Penalty Schedule for Program Regulating Distribution of Flyers By-law.

1. For the purposes of Section 2 of this By-law, Column 3 in the following table lists the provisions in the Designated By-law identified in the Schedule, as amended.
2. Column 2 in the following table set out the short form wording to be used in a Penalty Notice for the contravention of the designated provisions listed in Column 3.
3. Column 4 in the following table set out the Administrative Penalty amount that is payable for contraventions of the designated provisions listed in Column 3.

Column 1 Item #	Column 2 Short Form Wording	Column 3 Designated Provision	Column 4 Administrative Penalty Amount
1	No Person shall deposit an unaddressed Flyer at a Property where there is a clearly visible sign posted stating intent	3.1	\$75
2	No Distributor shall distribute or cause to be distributed an unaddressed Flyer at a Property where there is a clearly visible sign posted stating intent	3.2	\$75

At the discretion of the Officer, fines may be doubled for any and all subsequent repeat offences.

APPENDIX “C”

Bill No. _____
2022

By-law No. _____

A by-law to regulate the distribution of graphic 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 6, Health, safety and well-being of persons; and in paragraph 8, Protection of persons and property, including consumer protection;

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 Distribution of Graphic 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;

“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;

“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;

“Person” includes a corporation, other legal entities and an individual having charge or control of a Property;

“Property” means residential property.

Part 3 PROHIBITIONS

3.1 No person shall deposit a flyer containing a graphic image at any property.

3.2 No distributor shall distribute, permit to be distributed or cause to be distributed a flyer containing a graphic image at any property.

Part 4 ENFORCEMENT

4.1 Any person who contravenes any provision of this By-law is guilty of an offence.

4.2 A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.

4.3 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with the Administrative Monetary Penalty System By-law A-54, be liable to pay the City an Administrative Monetary Penalty.

4.4 A person convicted under this by-law is liable to a maximum fine of \$5000.00.

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

PASSED in Open Council on ,2022

Ed Holder
Mayor

Michael Schulthess
City Clerk

First Reading –
Second Reading –
Third Reading –

APPENDIX "D"

Bill No. _____
2022

By-law No. A-54- _____

A by-law to amend By-law No. A-54, as amended, being "A by-law to implement an Administrative Monetary Penalty System in London" to designate the Distribution of Graphic Flyers By-law.

WHEREAS section 434.1 of the Municipal Act authorizes the City to require a person, subject to conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality;

AND WHEREAS the Municipal Council considers it desirable to enforce and seek compliance with the designated by-laws, or portions of those by-laws, through the Administrative Monetary Penalty System;

AND WHEREAS the Municipal Council on June 25, 2019 passed By-law No. A-54, being "A by-law to implement an Administrative Monetary Penalty System in London;"

AND WHEREAS the Municipal Council deems it appropriate to amend Bylaw No. A-54 with respect to contraventions of the By-law establishing a Distribution of Graphic Flyers By-law;

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

1. That Schedule "A-1" of By-law No. A-54 be amended to include the Distribution of Graphic Flyers By-law By-law;
2. That the definition of "Administrative Penalty" be amended to add "A-(to be inserted by Clerks)" after "A-(to be inserted by Clerks)";
3. That section 2.1 be amended to add "A-(to be inserted by Clerks)" "A-(to be inserted by Clerks)";
4. That section 3.1 be amended to add "A-(to be inserted by Clerks)" after "A-(to be inserted by Clerks)";
5. That section 3.1a) be amended to add "A-(to be inserted by Clerks)" after "A-(to be inserted by Clerks)";
6. That the attached schedule "A-(to be inserted by Clerks)" Distribution of Graphic Flyers By-law be added to By-law No. A-54 to provide for a penalty schedule.

Schedule “A-(to be inserted by Clerks)”

Penalty Schedule for the Distribution of Graphic Flyers By-law;

1. For the purposes of Section 2 of this By-law, Column 3 in the following table lists the provisions in the Designated By-law identified in the Schedule, as amended.
2. Column 2 in the following table set out the short form wording to be used in a Penalty Notice for the contravention of the designated provisions listed in Column 3.
3. Column 4 in the following table set out the Administrative Penalty amount that is payable for contraventions of the designated provisions listed in Column 3.

Column 1 Item #	Column 2 Short Form Wording	Column 3 Designated Provision	Column 4 Administrative Penalty Amount
1	No Person shall deposit a a Flyer containing a Graphic Image at any Property.	4.1	\$350
2	No Distributor shall distribute, permit to be distributed or cause to be distributed a Flyer containing a Graphic Image at any Property	4.2	\$350

At the discretion of the Officer, fines may be doubled for any and all subsequent repeat offences.