

Report to Community and Protective Services Committee

To: Chair and Members
Community and Protection Services Committee
From: Barry Card, Deputy City Manager, Legal Services
Subject: “Graphic” Flyer Deliveries to Residential Properties
Date: April 20, 2022

Recommendation

That, on the recommendation of the Deputy City Manager, Legal Services, the following report and the attached proposed by-law (Appendix “A”) **BE RECEIVED.**

Executive Summary Discussion

This report is in response to the Council Resolution of March 22, 2022 directing that staff report back on the potential to include certain requirements in the draft By-laws regarding delivering of graphic flyers to residential properties.

Linkage to the Corporate Strategic Plan

Strengthening our Community.

Background

1.1 Previous Reports Related to this Matter

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

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

Community and Protective Services Committee (CPSC) Report March 1, 2022 - Draft By-Laws: Program Regulating Distribution of Flyers By-law and Distribution of Graphic Flyers to Residential Properties By-law.

Community and Protective Services Committee (CPSC) Confidential Report March 1, 2022 – “Graphic” Flyer Deliveries to Residential Properties.

1.2 Direction to Report Back

On March 22, 2022, Council resolved:

That the draft by-laws related to a program regulating the distribution of flyers by-law and distribution of graphic flyers to residential properties by-law BE REFERRED to the civic administration, in order for staff to report back on the potential to include the following in any potential by-laws:

- a) the requirement for any literature being left at private residences to meet the same public requirements as outdoor displays, or the regulations at a public participation meeting;
- b) the inclusion of a requirement for materials to have an outer wrap/cover for any such materials; and,
- c) the inclusion of a graphic content warning on any outside wrap.

1.3 Key Issues

- 1.3.1. Can requirements applicable to outdoor displays, or public participation meetings be applied to the delivery of flyers containing graphic images?
- 1.3.2 Can the City require that flyers containing graphic images be wrapped or covered?
- 1.3.3 Can the City require that flyers containing graphic images which have been wrapped or covered be marked with a warning?

2.0 Discussion

- 2.1 What are the requirements applicable to the content of outdoor displays?

Most advertising content requirements in Canada are the product of federal and provincial competition law that is not applicable here. Members of the Canadian Marketing Association must also abide by a Code of Conduct which can be accessed at: <https://thecma.ca/resources/code-of-ethics-standards>

The relevant CMA requirement is:

“Marketers using media that deliver advertising messages in public arenas should ensure that the content of their messages is sensitive to and compatible with local community standards, particularly when located in proximity to elementary and secondary schools or to other places where children or teenagers tend to congregate”.

These requirements are heavily subjective and cannot apply to flyer distribution for practical reasons.

- 2.2 What are the requirements applicable to public participation meetings?

The Council’s Procedure Bylaw (A-50) requires that “Every communication or petition intended for presentation to a standing committee shall be legibly written or printed and shall be signed by at least one person giving his/her address”. Beyond this basic requirement, the Clerk has the authority to edit agenda material for relevance, appropriateness and lawfulness.

These requirements cannot be imposed on flyer distribution for practical reasons.

- 2.3 Wrapping or Covering?

The Council has, through several debates, sought to balance several competing considerations, including: freedom of religion, freedom of expression and the right of individuals to avoid harm to themselves and their children, particularly in their own homes. The goal of the wrapping requirement is to achieve the latter, without unreasonably limiting the fundamental rights of those exercising the former. The wrapping requirement does not prevent the exercise of a freedom and will help to ensure that such deliveries are not inadvertently viewed by children in the absence of parental guidance or imposed on others who may find them offensive.

To accomplish this result, it is proposed that the restriction be strictly limited to the type of content which in the Council’s opinion, has the potential to cause harm. Since the discussion has focused directly on graphic images, and particularly, on images of aborted fetuses, the attached draft By-law (Appendix “A”) pertains to the delivery of graphic images, rather than to flyers. The definition of “graphic image” has been narrowed to the type of image that the Council has

considered. Since it is not possible to distinguish between such photos other than on the basis of their general nature, the restriction would apply to all images that appear to show a fetus.

Should Council approve the attached By-law (Appendix "A"), it is preferable that the associated amendment to the Administrative Monetary Penalties System By-law (Appendix "B") be approved concurrently. There will be no change to the compliance protocol (education, voluntary compliance, enforcement at Officer discretion) as noted in previous reports as well as the possible need for statements from complainants to assist in enforcement actions.

2.4 Warnings?

The purpose of the warning is to alert recipients to the nature of the content, so that recipients can make an informed decision before opening the wrapping. The purpose of the sender information requirement is to facilitate identification of the person who purports to exercise the freedoms that result in delivery of the graphic material. This requirement would assist a lawful exchange of opinions on the topic and also enforcement of the by-law, particularly when the delivery is made by volunteers or children.

Conclusion

The attached draft by-laws would regulate the unsolicited delivery of "graphic images" to residences, as proposed by the Council direction. It would not apply to flyers generally.

Prepared and Recommended: Barry Card, Deputy City Manager, Legal Services