



**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
**Corporate Assets and Strategic Planning Division**

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	March 17, 2014
<b>SUBJECT/REPORT NO:</b>	Publication Box Annual Permit Policy (PW14027) - (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Kathryn Holloway, Policy/Program Analyst (905) 546-2424 Extension 1332 Adam Sweedland, Supervisor, Operations Support (905) 546-2424 Extension 5089
<b>SUBMITTED BY:</b>	Gerry Davis, CMA General Manager Public Works Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the Publication Box Annual Permit Policy, attached as Appendix “A” to Report PW14027, be approved;
- (b) That the draft by-law to amend the Regional Municipality of Hamilton-Wentworth Regional Roads Use By-law R77-109 and the City of Hamilton Streets By-law 86-77, attached as Appendix “B” to Report PW14027, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

**EXECUTIVE SUMMARY**

The recommended Publication Box Annual Permit Policy (the “Policy”) sets out the process by which the City may permit the installation and maintenance of publication boxes on City property. This will assist the City in establishing higher maintenance standards and address publication boxes which have been installed without City approval.

Publication boxes typically offer pedestrians weekly newspapers, rental flyers, and other advertising materials.

Currently, publication companies are required to enter into an agreement with the municipality to allow the installation of publication boxes. This requirement is set out in the former City of Hamilton Streets By-law 86-77 and the former Regional Municipality of Hamilton-Wentworth Regional Road Use By-law R77-109 and applies only to publication boxes in the areas designated under those by-laws. Requests for new installations are infrequent. Over the years, agreements with publication companies

have expired, and as a result of corporate changes among publication companies, City staff turnover, and the amalgamation of the former municipalities, agreements were never formally renewed. However, publication boxes continue to exist on City property. The Policy replaces the provisions of the aforementioned by-laws. The amending by-law is attached to Report PW14027 as Appendix “B”.

Staff reviewed practices in other municipalities and are recommending a permitting system rather than fixed-term agreements. A permitting system will enable Policy and Programs staff to better monitor and control the location and condition of publication boxes, and to ensure that permit holders have adequate indemnification and liability insurance. The approved 2014 User Fees and Charges By-law includes fees for obtaining permits and permit renewals.

The Policy will require permit holders to ensure that publication boxes display weather-resistant stickers, which can be tracked to a staff database. City staff will be able to identify non-compliant publication boxes, and request compliance from the permit holder, or remove the publication box and charge the associated costs of removing and holding the publication box to the permit holder.

The Publication Box Annual Permit Policy can be amended as required to be incorporated into the Coordinated Street Furniture Program being developed by Public Works staff.

***Alternatives for Consideration - See Page 6***

**FINANCIAL - STAFFING - LEGAL IMPLICATIONS**

**Financial:** Publication companies seeking to install or maintain publication boxes on City property will be required to pay an annual fee of \$30.00 for permit renewals and \$45.00 for new permits as set out in the 2014 User Fees and Charges By-law, approved by Council on November 27, 2013. This fee has been calculated based upon staff time required to administer permits and monitor the program. The fees have increased from the previous user fee of \$19.00, as included in the 2010 User Fees and Charges By-law. The new user fees are at the lower end of those charged by comparable municipalities as outlined in Table 1.

**Staffing:** The Policy can be implemented within the current staff complement.

**Legal:** Annual permits will be subject to specific conditions by which staff can better control locations and impose maintenance standards. Legal Services staff have assisted with the development of the Policy, permit application form, and release and indemnity form.

**HISTORICAL BACKGROUND**

Prior to amalgamation, the former City of Hamilton and the former Regional Municipality of Hamilton-Wentworth permitted publication boxes to be placed within the road allowance. The former City of Hamilton Streets By-law 86-77 and the former Regional Municipality of Hamilton-Wentworth Road Use By-law R77-109 each contain provisions

setting out the conditions upon which publication boxes may be permitted. There are no other by-laws permitting the installation of publication boxes from the other former municipalities. Until recently, there had been no requests to place publication boxes on City property since amalgamation. However, staff have received a request from one publication company to install approximately 150 publication boxes within the road allowance in various locations throughout the City. This request prompted a review of existing processes, leading to the discovery of several administrative shortcomings and illustrating the need to immediately implement improvements to the process.

Any agreements with publication companies expired prior to amalgamation. However, some have continued to operate on an honour system. Most publication companies have continued to cooperate with the City by advising the City of the locations of their publication boxes, and submitting payments and liability insurance certificates. However, site visits suggest that some publication companies have installed publication boxes without approval from the City. It is evident that many of the existing publication boxes do not comply with the specifications set out in the aforementioned by-laws. Publication boxes also tend to attract vandalism and graffiti and the City has received several complaints about the condition of publication boxes. These issues can be better addressed with the implementation of the Policy.

In 2010, the user fees relating to publication boxes were removed from the City's User Fees and Charges By-law in anticipation of including publication boxes in a consolidated street furniture program. As that program was deferred to accommodate other long term agreements that expire on December 31, 2015, the gap with respect to the management of publication boxes has not been addressed. In addition, the proposed annual permitting system could be amended, as needed, to provide a long term solution that is harmonized with the anticipated street furniture program.

Following a review of practices in other municipalities, staff developed a Policy which establishes an annual permitting system that sets out prescribed criteria for the location, maintenance, and insurance and indemnification requirements.

This Policy supports the Public Works Business Plan, "Innovate Now" which identifies our vision "to be recognized as the centre of environmental and innovative excellence in Canada". This Policy aligns with the "Processes" vision driver by developing a smart process to meet our needs by ensuring adequate tracking and insurance for Publication Boxes on City Property.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

### Municipal Act, 2001

The City is authorized to implement a permitting system for Publication Boxes pursuant to Sections 8, 9 and 10 of the *Municipal Act, 2001*, which further authorizes the City, amongst other things, to delegate its authority and to impose fees or charges on persons for services or activities providing or done by or on behalf of it.

City of Hamilton By-law 86-77 and Regional Municipality of Hamilton-Wentworth By-law R77-109

The former City of Hamilton Streets By-law 86-77 and the former Regional Municipality of Hamilton-Wentworth Regional Roads Use By-law R77-109 each contain provisions for the placement of publication boxes within the City's road allowance. The Policy will replace the conditions in these by-laws and, accordingly, these by-laws can be amended accordingly.

**RELEVANT CONSULTATION**

The following City divisions were consulted in the development of the recommended permitting program.

- City Manager's Office: Legal Services;
- Planning and Economic Development Department: Parking & By-law Services Division (Municipal Law Enforcement), Economic Development Division (Urban Renewal);
- Corporate Services: Finance, Risk Management, Access & Equity; and
- Public Works Department: Operations Division

In addition, staff reviewed the practices of several municipalities and the results are presented in Table 1.

Table 1 - Municipal Practices

<b>Municipality</b>	<b>Authority</b>	<b>Deposit Fee</b>	<b>Annual Fee</b>
Oakville	By-law 1994-17	n/a	\$103.00 commercial
Mississauga	By-law 18-07	\$300.00 installation of pad	\$55.00 per box
Vaughan	By-law 372-2004	n/a	\$51.00
Toronto	Permitting clause included in by-law	\$71.87	\$28.24 (for the first 100) \$112.91 (for each box above 100)
Port Coquitlam, BC	By-law 3534	\$50.00	\$40.00
Richmond, BC	By-law 7954	n/a	\$75.00 paid newspaper \$100.00 free newspaper \$150.00 multiple publication news rack paid or free
Calgary, AB	Permitting clause included in by-law	n/a	\$75.00 in transit area \$50.00 in non-transit areas

Following implementation of the Policy, staff will continue to monitor and evaluate various aspects of the Policy including but not limited to user fees, program costs, maintenance and location requirements, and accessibility concerns.

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

There are an estimated 530 publication boxes throughout the City, many of which are known to be on City property. Due to expired agreements and the absence of a tracking system, many of these were installed on City property without approval from the City and the user fees were not paid. Staff have been working with some of the publication companies to establish accurate inventory lists. However, the City was not consulted in the selection of locations for many publication boxes and the absence of agreements means that many do not have proper insurance and indemnification in place to protect the City in the event of damage caused by the installation and maintenance of a publication box.

The Policy sets out the criteria to allow publication boxes to be installed on City property. Under the Policy, applicants will be required to submit an annual application, together with proof of insurance, an indemnification and release form, and the applicable fees.

Policy and Programs staff will review the proposed locations, and permits will only be issued for those locations which comply with the criteria set out in the Policy. Annual permits will consist of the publication box permit application with a stamp of approval issued by the General Manager, a schedule of the location of publication boxes, and weather-resistant stickers to be affixed to each publication box.

This process will allow staff to identify unauthorized publication boxes. It provides a simple system for identifying and dealing with maintenance issues. Staff will also be able to track temporary location changes made by the City due to construction, road repair, special events or any other reason.

In the event that staff identify a publication box without a permit, staff will contact the publication company and request that the publication box be removed or a permit application submitted. If the publication company has not obtained an annual permit and has not removed the publication box, the City may remove the publication box and require the publication company to pay the costs associated with removing and holding the publication box in order to claim it. The publication box will be held by the City for 60 days and may be disposed of if not claimed. Publication companies and permit holders who violate the Policy may be denied future annual permits by the General Manager. The ward councillor will be notified of any permit denials.

In order to provide publication companies an opportunity to comply with the Policy, there will be a three-month transitional period before the City removes non-compliant boxes. Publication companies will be contacted following council approval to advise them of the new Policy.

During the first year of implementation, staff will record data for the purpose of analysis. That data will include: the number of permits purchased, new installations, related

complaints, removals by the City or publication companies, and the publications being distributed through the publication boxes.

## **ALTERNATIVES FOR CONSIDERATION**

### **Enter into Fixed-term Agreements with Publication Companies**

Staff could approach publication companies with publication boxes on City property and request that they enter into a fixed-term agreement. This alternative would require successful negotiation and approval of agreements that would allow flexibility for the periodic addition and removal of publication boxes. Agreements would need to be established immediately and have termination dates that align with the timelines associated with the anticipated street furniture program. Council could give staff delegated authority for publication box agreements or could choose to consider each request individually. Fixed-term agreements have not proven to be an effective method of managing the installation and maintenance of publication boxes in the past. Accordingly, staff does not recommend this alternative.

### **Enact a Publication Box By-law**

Staff could develop a by-law with increased enforcement measures that could include fines for non-compliance. In light of the potential for aligning the Policy with the anticipated street furniture program and to allow staff sufficient time to evaluate and modify the Policy where needed, staff does not recommend this alternative at this time.

## **ALIGNMENT TO THE 2012 - 2015 STRATEGIC PLAN**

### **Strategic Priority #1**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

#### **Strategic Objective**

1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

### **Strategic Priority #2**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

#### **Strategic Objective**

2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

### **Strategic Priority #3**

Leadership & Governance

*WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.*

**Strategic Objective**

3.4 Enhance opportunities for administrative and operational efficiencies.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" Publication Box Annual Permit Policy

Appendix "B" A By-law to amend By-law No. R77-109, the Hamilton Regional Roads By-law and By-law No.86-77, the Hamilton Streets By-law