






CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Office of the City Clerk & Legal Services
and
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Licensing and By-law Services Division

TO:	Chair and Members, General Issues Committee
COMMITTEE DATE:	February 16, 2022
SUBJECT/REPORT NO:	Amendments to By-law No. 10-197, the Hamilton Sign By-Law, respecting Election Signs (FCS22003(a)/LS22006(a)/PED22018(a)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Aine Leadbetter, Manager Elections, Print and Mail, x 2753 Stacey Applebee, Solicitor, x4660
SUBMITTED BY:	Andrea Holland, City Clerk  Stephen Spracklin, City Solicitor
SIGNATURE:	 Monica Ciriello, Director Licensing and By-law Services Planning and Economic Development Department 

Discussion of Appendix "C" to report FCS22003(a)/LS22006(a)/PED22018(a) in Closed Session is subject to the following requirement(s) of the City of Hamilton's Procedural By-law and the Ontario Municipal Act, 2001:

- Advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

RECOMMENDATION

- (a) That the draft By-Law "To Amend By-law No. 10-197, the Hamilton Sign By-Law, respecting Election Signs", attached as Appendix "A" to Report FCS22003(a)/LS22006(a)/PED22018(a), which has been prepared in a form satisfactory to the City Solicitor, be approved and enacted by Council;
- (b) That subject to the approval of Recommendation (a) of Report FCS22003(a)/LS22006(a)/PED22018(a), Council approve and enact the draft

By-Law “To Amend By-law 17-225, a By-law to Establish a System of Administrative Penalties”, attached as Appendix “B” to Report FCS22003(a)/LS22006(a)/ PED22018(a), which has been prepared in a form satisfactory to the City Solicitor; and,

- (c) That the contents of Appendix “C” to Report FCS22003(a)/LS22006(a)/ PED22018(a), remain confidential.

EXECUTIVE SUMMARY

In advance of the 2022 Municipal and Provincial Elections, Staff is recommending that amendments to the Hamilton Sign By-law, being By-law No. 10-197 (the “Sign By-law”) be enacted to establish a separate Schedule respecting Election Signs, providing greater clarity and accessibility for candidates, third party advertisers and members of the public. While most of the provisions related to election signs are unchanged, the proposed amendments to the Sign By-law include language clarifying permissible displays, enhancements to relevant definitions, regulations pertaining to third party advertising, and regulations respecting vehicle signs.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial: None

Staffing: None

Legal: Please see Appendix “C” to Report FCS22003(a)/LS22006(a)/PED22018(a)– Confidential Legal Opinion.

HISTORICAL BACKGROUND (Chronology of events)

The City of Hamilton enacted By-law 02-368, being a By-law to regulate Election Signs in the City of Hamilton, on December 11, 2002. This by-law was introduced to consolidate existing by-laws regulating Election Signs under the newly amalgamated City of Hamilton. The by-law was subsequently amended in 2004 in response to the 2003 municipal election, with amendments largely focusing on refining roles and responsibilities and clarifying notification and infraction procedures.

In 2006, By-law 02-368 was repealed and provisions for Elections Signs were included under a broader Sign By-law No. 06-243, being A By-Law Respecting Signs and Other Advertising Devices Within the City of Hamilton. Following a comprehensive review, By-law 06-243 was repealed in August 2010 and replaced by the Sign By-law.

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Election Signs are currently governed under section 5.9 of the Sign By-law. Section 5.9 also incorporates the General Prohibitions and Regulations set out in section 4.1 and Prohibited Signs set out in section 5.1. While there have been minor modifications and housekeeping amendments since its enactment in 2010, the section pertaining to Elections Signs has remained unchanged.

On January 11, 2022, Planning Committee considered report FCS22003/LS22006/PED22018 -Amendments to By-law No. 10-197, the Hamilton Sign By-Law, respecting Election Signs. Following discussion, Planning Committee recommended the following:

- (a) That Report FCS22003/LS22006/PED22018 respecting Amendments to By-law No. 10-197, the Hamilton Sign By-Law, respecting Election Signs, be referred to the General Issues Committee; and,
- (b) That the report back to the General Issues Committee on Report FCS22003/LS22006/PED22018 respecting Amendments to By-law No. 10-197, the Hamilton Sign By-Law, respecting Election Signs, include greater clarity on enforcement and definition of Signs in Appendix “A” to the report, campaign materials on bus shelters, the rationale for the 100m radius from polling stations, property line locations, vehicle wraps, whether the matters fall under municipal or provincial jurisdiction, and allow for public consultation, where appropriate (for matters not legislated by the Municipal Act);
- (c) That the contents of Appendix “C” to Report FCS22003 / LS22006 / PED22018, remain confidential.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The City of Hamilton is authorized to pass by-laws respecting signs pursuant to paragraph 10 of subsection 10(2) of the *Municipal Act*, 2001.

Signs, including Election Signs, are a form of expression protected under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). Section 1 of the *Charter* permits the imposition of “reasonable limits” on the rights and freedoms guaranteed under the *Charter*. Attached as Appendix “C” to this Report is a confidential appendix outlining *Charter* considerations.

Enactment of the proposed By-law To Amend By-law No. 10-197, the Hamilton Sign By-Law, respecting Election Signs will require the amendment of By-law No. 17-225, the By-law to Establish a System of Administrative Penalties.

RELEVANT CONSULTATION

Internal Staff from By-Law Services, Financial Services and Transportation Planning and Parking have been consulted in the review of the By-law.

Additionally, staff consulted externally with municipal counterparts through the Municipal Elections Working Group and assessed Election Sign By-laws from municipalities across the province.

In the research and drafting of the amendments to the Sign By-law, Staff reviewed feedback received from the community and candidates following the 2018 Municipal election. Additional feedback and input from the community was received via email and through communications prior to the January 11, 2022 Planning Committee meeting.

A revised version of the Sign By-law amendment, based on feedback from the January 11, 2022 Planning Committee meeting, was made public for further consultation between the period of January 25, 2022 and February 1, 2022. The public was invited to review the proposed Sign By-law amendments and provide feedback directly to elections staff. During this consultation period, staff received five emails. Feedback and commentary was provided specifically on the following sections of the Sign By-law amendment:

Section 1- definition of “Election Sign”- an email was received requesting clarification that the definition did not include issue-based signs. Additionally, a question was raised about the applicability of the definition to clothing. In both instances email confirmation was provided by staff that the revised version of the Sign By-law amendment clarified these issues.

Section 17- ‘no person shall display an Election Sign with electronic message display’- a suggestion was made that this clause be removed given the prevalence of electronic signage.

Section 24(c)- ‘restrict signage within 25 metres of a voting place’- Feedback received expressed concern with restricting the ability of the community to post signs on private property; raised the issue of enforceability; and questioned whether signs in the immediate area of a voting place would influence voters

ANALYSIS AND RATIONALE FOR RECOMMENDATION

In advance of each municipal election, staff review and consider existing policies and procedures related to elections to ensure clarity, effectiveness, alignment to legislation, and also to identify potential areas for improvement or enhancement. Through recent review, staff have identified the Sign By-law as it pertains to election signage, as a key document requiring updating in advance of the 2022 Provincial and Municipal Elections.

Since the enactment of the Sign By-law there have been changes to the *Municipal Elections Act, 1996* (the “MEA”), including the regulation of third-party advertisers and enhancements to the types and mediums of signs used within municipal campaigns.

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While the majority of the content in the Sign By-law, as it pertains to Election Signs, remains static and relevant, this has resulted in a need to update aspects of the existing Sign By-law to modernize the content and ensure that the by-law aligns with rights guaranteed under the Charter.

In the proposed By-Law To Amend By-law No. 10-197, the Hamilton Sign By-Law, respecting Election Signs, regulations respecting Election Signs have been separated from the main body of the Sign By-law and included as a separate Schedule. While these proposed amendments to the Sign By-law maintain many of the regulations from the existing Sign By-law, a separate, stand-alone Schedule would provide greater clarity to, and ease of reference for, members of the public, candidates and third-party advertisers throughout the campaign period, while maintaining connection to the existing Sign By-law and avoiding duplication.

While retaining the existing prohibition against Election Signs on City Property, apart from posterage in designated areas, the draft Sign By-law amendment contains additional language permitting the holding of a hand-held Election Sign; the display of an Election Vehicle Sign while affixed to a vehicle that is in use on any Roadway, or authorized parking space; and the display of an Election Sign on commercial advertising space owned or operated by the City or one of its agencies, boards or commissions.

The draft Sign By-law amendment provides further clarification surrounding Third Party requirements for signage. Amendments to the MEA created a regulatory framework for Third Party advertising including requirements for contact information to be included on Third Party advertisements. The proposed amendments to the Sign By-law incorporate this requirement to enhance the ability of staff to identify and contact Election Sign owners should there be a violation of the by-law.

Efforts have additionally been made to enhance the Sign By-law respecting Election Signs to consider additional signage and mediums that are not specifically identified in the current Sign By-law. The definition of 'Election Sign' has been expanded to consider more mediums and approaches including Election Vehicle Signs, which have been specifically addressed within the draft Sign By-law amendment; and election bumper stickers which have been excluded from application of the Sign By-law. By specifically enhancing the definition of Election Sign and addressing alternate forms of election signage, these amendments intend to limit grey areas and provide greater clarity.

Definition of Election Sign

In accordance with feedback received during the Planning Committee meeting and from the community, the definition of Election Sign has been further updated to enhance clarity. The intent of the by-law is to include signs relating to candidates or to a question

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on the ballot during the period of an election. To ensure that this intention is clear, and to avoid misinterpretation, the definition of ‘Election Sign’ was updated as follows:

“Election Sign” means any object, entity, thing, surface, structure, display and any other component parts which are used as a visual medium or display for the purposes of:

- (i) advertising, promoting, opposing or taking a position with respect to any Candidate, Election, political party, or question or by-law submitted to the electors on the ballot under the Canada Elections Act, the Election Act, the Municipal Elections Act, 1996, or any other legislation; or
- (ii) influencing electors to vote for or against a Candidate, political party, or question or by-law submitted to the electors on the ballot under the Canada Elections Act, the Election Act, the Municipal Elections Act, 1996, or any other legislation.

An Election Sign can take any form but does not include Election Campaign Material or an Election Bumper Sticker.

Further, a definition of “Election Campaign Material”, which includes clothing as an example, was added to clarify that clothing is not considered to be signage. Enforcement of this section of the by-law will be limited to Election Signs as defined above and will not include enforcement of issue-based signage provided that such signage adheres to the regulations in the broader Sign By-law.

Vicinity of Voting Place on Voting Day

Staff reviewed restrictions on Election Signs near voting places on voting day and advance voting days (collectively “Voting Days”). The current Sign-By is silent in defining what the “immediate vicinity of the voting place” is. In the version of the Sign By-law amendment considered at Planning Committee on January 11, 2022, a restriction to prevent Election Signs from being placed within 100 metres of a voting place during Voting Days was proposed.

Concern was raised with regard to enforceability, and the reasonableness of this specific distance, and in response, staff have amended the provision so as to restrict signs within 25 metres of a voting place on Voting Days. Staff are recommending a measurable distance to support enforceability and feel that including this restriction is important to reduce influence on voters, consistent with Section 48 of the MEA which provides:

Prohibition

48 (1) While an elector is in a voting place, no person shall attempt, directly or indirectly, to influence how the elector votes. 1996, c. 32, Sched., s. 48 (1)

No election campaign material

(2) Without limiting the generality of subsection (1), no person shall display a candidate's election campaign material or literature in a voting place. 1996, c. 32, Sched., s. 48 (2).

Interpretation

(3) For the purpose of this section,

“voting place” includes any place in the immediate vicinity of the voting place designated by the clerk.

As this restriction is limited only to Voting Days and is at the lower end of that enforced in similar by-laws across the province, staff believe that this is a reasonable restriction aimed at limiting the influence on electors in a voting place.

Commercial Advertising

Pursuant to the City's Commercial Advertising Policy, commercial advertising, including political advertising, may be permitted on City-Owned or City-controlled assets (ie: bus shelters). Staff will identify any such locations that are located within 25 metres from a voting place and ensure that, consistent with the provisions of the Sign By-law amendment, contract periods for such locations exclude Voting Days. Non-compliant campaign literature or signage posted within 25 metres of a voting place on Voting Days will be removed.

Election Vehicle Signs

Staff reviewed the language surrounding Election Vehicle Signs within the amended Sign By-law, specifically sections which permit Election Vehicle Signs on Roadways and public parking lots, and the prohibition of Election Vehicle Signs within 25 metres of a voting place on Voting Days. Staff revisited comparator by-laws with reference to Election Vehicle Signs to compare approaches and found some divergence in approach. As Election Vehicle Signs under the Sign By-law amendment is a new addition, staff is recommending that the City impose fewer restrictions in terms of locations where a vehicle containing an Election Sign can be parked, and leave existing sections in the amended Sign By-law pertaining to Election Vehicle Signs intact. Following the 2022 Municipal Election, staff will conduct a review to determine if greater restrictions should be imposed on Election Vehicle Signs in any by-law updates in the future.

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Election Signs on Boulevards

To provide clarity to the public, candidates, and third parties relating to permitted locations for Election Signs, new definitions for Roadway, Road Allowance, Sidewalk and Boulevard have been added to confirm that Election Signs are not permitted on any part of a Road Allowance, including on a Boulevard that abuts private property. This prohibition is pre-existing in the current Sign By-law, however staff felt there was a need to clarify intention and the new definitions eliminate any uncertainty that may have existed previously. Elections staff will enhance communication and resources available on the Sign By-law. This will include a detailed fact sheet that will provide key information on the Sign By-law pertaining to Election Signs, including sign placement.

Electronic Message Display

Staff recommend that the prohibition against electronic message display remain. This prohibition is pre-existing in the current Sign By-law and similar prohibitions are found in many comparator by-laws.

Enforcement

City enforcement staff reviewed past practices during elections periods and confirmed that the majority of the enforcement surrounding Election Signage has been complaint based. Proactive enforcement occurs on publicly owned properties (e.g. recreation centres, parks), to ensure compliance with the By-Law.

ALTERNATIVES FOR CONSIDERATION

n/a

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” - draft By-Law “To Amend By-law No. 10-197, the Hamilton Sign By-law respecting Election Signs”

Appendix “B” - draft By-Law “To Amend By-law 17-225, a By-law to Establish a System of Administrative Penalties”

Appendix “C” - Confidential Legal Opinion

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