



SUBJECT: By-law to regulate distribution of graphic images

TO: Committee of the Whole

FROM: By-Law Compliance Department

Report Number: BL-03-24

Wards Affected: All

Date to Committee: March 4, 2024

Date to Council: March 19, 2024

Recommendation:

Approve a by-law, substantially in the form attached as appendix A to by-law compliance department report BL-03-24, which regulates the distribution of graphic images, otherwise known as the “Graphic Image Delivery By-law”, to require those distributing graphic images in the City of Burlington to enclose images in an envelope or package, in a form satisfactory to the Executive Director of Legal Services and Corporation Counsel.

PURPOSE:

To regulate the distribution of graphic images in the City of Burlington.

Vision to Focus Alignment:

- Building more citizen engagement, community health and culture

Background and Discussion:

At its meeting of November 14, 2023, Council approved staff direction SD-40-23 contained in Motion Memorandum CSSRA-12-23 as follows:

Direct the Director of By-law Compliance, in consultation with the Executive Director of Legal Services and Corporation Counsel, or their delegate, to prepare a by-law regulating unsolicited distribution of graphic images (abortion flyers) to residences for consideration by Council in Q2 2024.

The motion was given due to increased complaints regarding 'disturbing' flyers being distributed to residences in Burlington. The proposed by-law will require that such flyers be enclosed in an envelope with a warning allowing recipients to choose if they wish to open and read the material.

By-laws such as this are becoming common as the practice of distributing graphic flyers has increased. Similar by-laws have passed in Ontario. The cities of London and St. Catharines have implemented by-laws while Hamilton, Toronto and Oakville have received direction from their Councils to explore similar legislation.

In terms of provincial legislation, a private members bill, Bill 80 "Viewer Discretion Act (images of fetuses)", did pass a first reading on March 20, 2023 and has been ordered for a second reading but there is no guarantee it will become law. The first iteration of this bill (Bill 259) passed first reading on March 8, 2021 but did not move forward.

Proposed Fines

Staff will be recommending that the Province approve a fine of \$100 per image distributed. This amount has been chosen as it is the same fine proposed in Bill 80 "Viewer Discretion Act (images of fetuses)". There is no guarantee this fine amount will be approved. This by-law will be included in the future Administrative Penalty System which will provide Council the opportunity to modify the fine amount.

Options Considered

In addition to complaints regarding flyer distribution, staff do receive complaints regarding similar images being displayed during protests. Staff did consider if there were any legal options to regulate such signs.

If the signs are placed or affixed to City property, staff can have them removed as per Sign By-law 34-2007. Demonstrations or protests on public property are protected by freedom of peaceful assembly as well as freedom of expression rights guaranteed by the Canadian Charter of Rights and Freedoms (the "Charter"). If the signs are being held by protesters, and do not meet the requirements of hate speech or obscenity under the *Criminal Code*, RSC 1985, c.C-46 of Canada, they are currently protected by the Charter. Other than ensuring the protest is conducted in a safe, peaceful manner and not located on private property, municipal staff (including police) do not have the authority to have the signs removed.

Financial Matters:

No additional revenue is expected with the introduction of this by-law. The number of calls expected is minimal and any fines recovered will be used to offset the cost of enforcement.

Other Resource Impacts

Not applicable. Staff already respond to these types of calls and this by-law just provides a tool to enforce effectively.

Climate Implications:

Not applicable.

Engagement Matters:

None.

Conclusion:

The proposed by-law will provide enforcement with a tool to minimize the impact the distribution of graphic images has on community members.

Respectfully submitted,

Kerry Davren

Director of By-law Compliance

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Appendices:

- A. Graphic Images Delivery By-law

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.