

**Subject:** Graphic Images in the Public Right of Way

**Report to:** Corporate Services Committee

**Report date:** Wednesday, July 10, 2024

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## Recommendations

1. That this report **BE RECEIVED** for information.

## Key Facts

- On March 6, 2024, Corporate Services Committee (CSC) passed motion CSC-C 5-2024 directing the Office of the Deputy CAO to provide a report to CSC by July 10 detailing options to govern the display of graphic images in the public right of way.
- As per Sections 11 and 59 of the *Municipal Act, 2001*, upper-tier municipalities are authorized generally to pass by-laws for purposes of the health, safety and well-being of persons and to prohibit or regulate the placement or erection of any sign or advertising device within 400 metres of the limit of an upper-tier highway (Regional road) to address potential safety implications.
- There are practical considerations regarding enforcement due to lack of jurisdiction outside of upper-tier roads/right of ways, meaning that the effectiveness of a by-law may be limited as its application will not be comprehensive (see Appendix 1).
- In addition, with respect to the regulation of content, municipal by-laws are subject to the Canadian Charter of Rights and Freedoms and if challenged and found to infringe on freedom of expression rights, must meet the test of being demonstrably justified and a reasonable violation within the meaning of Section 1 of the Charter.
- Staff conducted a jurisdictional scan of other municipalities and found that no upper-tier municipality has a graphic images provision in their signage by-laws at present. No Canadian municipality specifically prohibits or regulates graphic images in the public right of way, although some lower-tier and single-tier municipal Councils are currently exploring this, and some have opted to restrict advocacy messaging generally (see Appendix 2).
- Given that this is an emerging and potentially controversial area actively under consideration by a number of other municipalities across Ontario, staff will continue to monitor developments for purposes of updating Council at a future date.

## Background

On March 6, 2024, Corporate Services Committee passed the following motion:

1. That the Office of the Deputy CAO PROVIDE a report to Corporate Services Committee by July 10, 2024, proposing how to govern the display of graphic images in the public right of way, with “graphic images” meaning: a visual image showing, or purporting to show any subject matter that is not in compliance with the Canadian Code of Advertising Standards and offends the standard of public decency prevailing among a significant segment of the population, including, but not limited to, images showing or purporting to show medical waste; images showing or purporting to show a fetus or any part of a fetus; or an image showing or purporting to show a dead or injured animal or human body or any part of a dead or injured animal or human body, or another definition the Office of the Deputy CAO determines to be appropriate.

## Analysis

### Jurisdictional Scan

Currently, no municipal government in Ontario has implemented a by-law specifically governing the display of graphic images in the public right of way; however, a number of municipal Councils have begun to explore the matter. Below is an overview of single- and lower-tier municipalities that have existing by-laws or are in the process of exploring options to introduce by-laws that restrict advocacy messaging or the display and/or delivery of graphic images; no precedent exists for upper-tier municipalities. Please see Appendix 2 for more detail.

### **Jurisdictional Scan: Municipal By-laws Restricting the Display and/or Delivery of Graphic Images**

<b>Municipalities Exploring By-law Options to Ban the Display of Graphic Signs</b>
<ul style="list-style-type: none"> <li>• City of Hamilton, City of London, Town of Oakville</li> </ul>
<b>Municipalities with By-laws Restricting Advocacy Messaging</b>
<ul style="list-style-type: none"> <li>• City of Calgary (AB)</li> <li>• City of Toronto (amendment coming June 2024)</li> </ul>
<b>Municipalities with By-laws Restricting the Delivery of Graphic Images</b>
<ul style="list-style-type: none"> <li>• City of Calgary (AB), Town of Airdrie (AB), Town of Strathmore (AB), Town of Okotoks (AB), City of St. Catharines, City of London, City of Woodstock, City of Burlington, Town of Ingersoll</li> </ul>

The City of St. Catharines by-law restricting delivery of graphic images has been the subject of a recent legal challenge and the matter is proceeding before the courts. The group bringing the challenge is asking the court to strike down the by-law as unconstitutional, a violation of the Charter right to freedom of conscience and religion, freedom of expression, and as outside of the authority of municipal government.

Staff will continue to monitor of the regulation of graphic images in other municipalities for purposes of updating Council on future developments including once the Cities of Hamilton, Oakville, and London release their reports, in addition to the outcome of the Court challenge on graphic image flyer delivery in St. Catharines.

### **Bill 80, *Viewer Discretion Act (Images of Fetuses)***

At the provincial level, there has been a move to regulate the delivery of graphic images to private residences. Originally introduced in 2021 as Bill 259, Bill 80 was reintroduced in 2023 and has not yet gone through a second or third reading required to receive Royal Assent and become law. If passed, the Bill provides that no one shall send a graphic image of an aborted or otherwise non-viable fetus by mail or otherwise distribute such an image unless the image is contained in an opaque envelope, the exterior of the envelope includes a description of the contents and the exterior of the envelope clearly identifies the sender.

This Act does not propose to address restricting the display of graphic signs in the public right of way.

### **Canadian Code of Advertising Standards**

The Canadian Code of Advertising Standards (CCAS) sets criteria for acceptable advertising that is truthful, fair and accurate. While these standards are tailored to advertising, the Ad Standards Council has responded to complaints regarding unsolicited delivery of door-to-door pamphlets featuring aborted fetuses.

The Ad Standards Council ruled that in using images of aborted fetuses the advertiser displayed obvious indifference to conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population and was a violation of standard 14d, which speaks to unacceptable depictions and portrayals.

It is important to note Niagara Region does not sell advertisement space to public or private entities, so the CCAS is not incorporated into any Regional policies or procedures. Staff could be requested to consider the feasibility of incorporating CCAS into the Region's signage by-law.

## **Legal Considerations**

### **Charter of Rights and Freedoms**

The Charter of Rights and Freedoms affords fundamental freedoms for all Canadian citizens, including freedom of expression. Generally, individuals have the right to express themselves, unless expressions take the form of violence or threaten to incite violence. This right intersects with municipal authority to regulate signage, including signs, billboards, posters and leaflets.

Municipal signage by-laws have been challenged in court, with most cases confirming infringement upon freedom of expression rights, and various outcomes either upholding or striking down by-laws depending on whether they were found to be demonstrably justifiable and a reasonable violation within the meaning of Section 1 of the Charter. The onus would be on the municipality to demonstrate that a by-law regulating the display of graphic images is a reasonable limit that can be demonstrably justified, and the broader social interest furthered by the by-law justifies limiting individual rights. Regulation measures must be carefully considered. Court decisions in this regard are heavily dependent on the specific facts (the nature of the regulation in question, the specifics of the signage, etc.).

If Council directs staff to develop a by-law to regulate the display of graphic images or content of signage otherwise within the public right of way, further legal advice will be provided in closed session based on the particulars of the Council direction provided and draft by-law proposed.

### **Enforcement**

The Region has an existing sign by-law (122-2013) that does not address graphic images specifically but does regulate the means in which a temporary sign may be placed on a Regional right of way. Should Council wish to amend the existing by-law or create a new by-law restricting the display of graphic images in the public right of way, enforceability would be limited to lands under the jurisdiction of the Region, namely Regional roads and road allowances.

As per the map attached as Appendix 1, this would result in any regulation being limited to the areas highlighted in colour only. From a practical perspective, without adoption of similar by-laws by the local area municipalities (LAMs), this would result in the ability for signage to be moved between sidewalk areas outside of the Region's jurisdiction to sidewalks that form part of local roads.

Other enforcement considerations include:

- The Region has limited enforcement response capabilities and depending on the enforcement approach/strategy may require additional resource allocation.
- Opportunity for alignment with LAMs by-law language and enforcement divisions to establish ability to enforce violations across the region in a comprehensive and consistent manner.
- If signs are placed and left, there may be an inability to identify the person or corporation that placed sign and pursue available enforcement mechanisms.
- Education for public and agencies.

## **Options**

As requested by Council, the following section details options available to govern the display of graphic images in the public right of way, as well as considerations should staff be directed to move forward.

Regional Council is authorized to pass by-laws respecting Regional property and Regional roads, as well as the placement or erection of signs or advertising devices within 400 metres of the limit of Regional roads, and for the benefit of the health, safety and well-being of the community, subject to compliance with applicable laws, including the Charter.

The Region could opt to create a stand-alone by-law or amend the Region's existing sign by-law to regulate graphic images on temporary signs by limiting either specific images, size restrictions, location of permitted signs, or a combination thereof.

The City of Hamilton, City of London, and Town of Oakville are set to present options regarding regulation of graphic images in the public right-of-way over the next several months. It would be beneficial to continue monitoring these developments to allow Regional staff to leverage the approaches other municipalities are taking.

If staff are directed to pursue creation of a by-law restricting graphic images or other content, the following considerations should be addressed:

- Community partner engagement should form part of this process to:
  - Determine resident demand for such a by-law (i.e.: is it an issue for a targeted area or Niagara as a whole) to ensure areas of jurisdiction are reflective of community need.
  - Define “graphic images”.
  - Identify the objectives and criteria and determine proportionate limitations that are justifiable.
- Enforcement concerns highlighted above will remain a challenge unless lower-tier municipalities adopt similar policies or common agreement is reached on approach. Engagement should be sought to determine feasibility of harmonized approach.
- An internal working group would need to be established with collaboration between Transportation Services, enforcement, and Legal Services to ensure the proposed by-law is carefully crafted, effective in addressing the temporary nature of these signs, practical to adopt/enforce, and likely to withstand a Charter challenge, if brought.

### **Relationship to Council Strategic Priorities**

Exploring best practices related to the display of graphic images in the public right of way is consistent with Council’s 2023-2026 strategic priority focus of creating an equitable Region. Specifically, it supports creating safe and inclusive communities.

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## **Appendices**

Appendix 1 Map of Regional roads

Appendix 2 Jurisdictional Scan: Municipal By-laws Restricting the Display and/or Delivery of Graphic Images