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Committee Report 22-005
Report
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CM: February 23, 2022
Ward: City Wide

Bill No. 031

CITY OF HAMILTON

BY-LAW NO. 22-031

To Amend By-law No. 10-197, the Hamilton Sign By-law respecting Election Signs

WHEREAS Council enacted By-law 10-197, a By-Law repealing and replacing By-law No. 06-243 respecting Signs within the City of Hamilton (the “Hamilton Sign By-law”);

AND WHEREAS to provide clarity and ease of reference, Council for the City of Hamilton has determined that it is desirable to amend the Hamilton Sign By-law by deleting provisions related to Election Signs from the main body of the By-law and inserting Schedule 1 which pertains to Election Signs;

AND WHEREAS Council for the City of Hamilton recognizes the importance of the right to freedom of expression and recognizes that Election Signs are a protected form of expression under the Canadian Charter of Rights and Freedoms;

AND WHEREAS the Council for the City of Hamilton seeks to protect the constitutional right to freedom of expression, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. The amendments in this By-law include any necessary indexing, grammatical, numbering and lettering changes.
2. The definition of “Election Sign” as set forth in Section 1.1 of this By-law is hereby deleted.
3. Section 4.1(d)(i) of this By-law is hereby amended by deleting the words “or Election Sign”.
4. Sections 5.9.1 and 5.9.2 of this By-law are deleted in their entirety and replaced with the following:

“5.9.1. The Regulations pertaining to Election Signs shall be as set forth in
Schedule 1 of this By-law.”

5. Schedule 1 attached hereto is inserted following Part 11 of this By-law.
6. This By-law comes into force on the day it is passed.
7. All prosecutions and other enforcement processes with respect to Election Signs commenced under Part 7.0 of the Hamilton Sign By-law, as amended, which have not been completed as of the day this By-law comes into force shall be completed under the Hamilton Sign By-law, as amended, as it read prior to this By-law coming into force.

PASSED this February 23, 2022.

F. Eisenberger
Mayor

A. Holland
City Clerk

Schedule 1

Election Signs

DEFINITIONS

1. In this Schedule:

“Advance Voting Day” means one or more days that are designated for electors to cast ballots prior to Voting Day;

“Boulevard” means all parts of the Road Allowance, excluding any Roadway or Sidewalk;

“Campaign Office” means a building or structure, or part of a building or structure, used by a Candidate or an agent of a Candidate or by a Registered Third Party or an agent of a Registered Third Party as part of an Election campaign and registered with the Clerk as the Candidate or Registered Third Party’s Campaign Office;

“Campaign Office Election Sign” means a sign displayed at a Campaign Office which displays the name of a Candidate in a municipal or school board Election, or the name of a Candidate and/or the name and/or logo of a political party in a federal or provincial Election, or the name of a Registered Third Party and the location of a Candidate’s or Registered Third Party’s Campaign Office in any Election;

“Candidate” means a person whose nomination to run in a Municipal, Provincial or Federal election, including school board elections, has been certified or confirmed by the necessary Election official as required by the governing legislation;

“City Clerk” means the City Clerk for the City of Hamilton or their designate;

“City Property” means property owned by or under the control of the City, and its agencies, boards or commissions and includes the Road Allowance;

“Director” means the City’s Director of Licensing and By-law Services and/or their designate;

“Election” means a federal or provincial election or by-election, a municipal election or by-election, a school board election or by-election, a federal, provincial or municipal referendum and any question submitted to the electors by a federal, provincial or municipal government;

“Election Bumper Sticker” means a label or sticker measuring not more than 7.62 centimetres (3 inches) by 29.21 centimetres (11.5 inches) which is affixed to a Vehicle and used for the purposes of advertising, promoting, opposing or taking a position with respect to any Candidate, Election or political party, or influencing

electors to vote for or against an issue associated with any Candidate, Election or political party, or influencing electors to vote for or against any Candidate or political party or position;

“Election Campaign Material” means pamphlets, brochures or any articles of clothing distributed by or on behalf of a Candidate or Registered Third Party for the same purposes as an Election Sign;

“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;

“Election Vehicle Sign” means any form of Election Sign, displayed in or on a Vehicle, excluding an Election Bumper Sticker;

“Municipal Elections Act” means the *Municipal Elections Act, 1996*, S.O. 1996, c.32, Sched (MEA) as amended, and any Regulations thereunder;

“Parks By-law” means the City of Hamilton By-law 01-219, as amended or any successor by-law thereto;

“Private Property” means any land or real property other than City Property and includes property owned or under the control of the Provincial or Federal Government and their respective agencies, boards or commissions, and excludes the Road Allowance abutting the Private Property;

“Registered Third Party” means:

- (a) one of the following whose notice of registration has been certified by the City Clerk pursuant to section 88.6 of the *Municipal Elections Act*: (i) an individual who is normally a resident in Ontario; or (ii) a corporation that carries on business in Ontario; or (iii) a Trade Union that holds bargaining rights for employees in Ontario;
- (b) an individual, corporation or other entity that complies with the requirements set forth in section 37 of the *Election Finances Act* and has been registered by the Chief Electoral Officer pursuant to the *Election Finances Act*, where that Act requires; or

(c) an individual, corporation or group that complies with the requirements set forth in section 353 of the *Canada Elections Act* and has been registered by the Chief Electoral Officer pursuant to the *Canada Election Act*, where that Act requires, And a “Third Party Advertiser” has the same meaning

“**Road Allowance**” means the allowance for a public road and includes the travelled and untravelled portions, including the Roadway, Boulevard, and Sidewalks;

“**Roadway**” means that part of a Road Allowance that is improved, designed or ordinarily used for vehicular traffic including reserved lanes, shoulders, curbs and gutters;

“**Sidewalk**” includes all such parts of a Road Allowance as are set aside and improved primarily for the use of pedestrians;

“**Third Party Advertisement**” means a sign or advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting, supporting or opposing a Candidate in an Election, or intended to influence persons to vote for or against any Candidate or any question submitted to the electors, and which has been displayed without the authorization, direction or involvement of a Candidate; (See Section 1(1) of the *MEA*)

“**Trade Union**” means a trade union as defined in the *Labour Relations Act, 1995* or the *Canada Labour Code (Canada)* and includes a central, regional or district labour council in Ontario;(See Section 1(1) of the *MEA*)

“**Vehicle**” means a vehicle as defined in the *Highway Traffic Act, R.S.O. 1990, c. H8* as amended;

“**Voting Day**” means the day on which the final vote is to be taken in an Election; and (See Section 1(1) of the *MEA*)

“**Voting Place**” means the location(s) where electors cast their ballots as established and approved by the federal, provincial or municipal Election officials and includes the entire property and all the boundaries associated with it, including any abutting Road Allowance, when such Voting Place is located within a City Property or Private Property and shall also include the common elements when the Voting Place is located within a Private Property.

2. Terms used in this Schedule and not defined herein shall have the same meaning as given to those terms in Part 1.0 the By-law.

SCOPE

3. This Schedule applies to and regulates all Election Signs displayed on property within the City. Where a provision of this Schedule conflicts with a provision of any federal or provincial statute or regulation or any By-law, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.
4. This Schedule shall not apply to signs displayed by the City or the provincial or federal governments to provide information concerning an Election or any part of an Election process.
5. This Schedule shall not apply to any Road Allowance under the jurisdiction of the Ministry of Transportation.

INTENT

6. In addition to the purposes listed in Section 2.3 of this By-law, the intent of this Schedule is to regulate Election Signs in the City in a manner that recognizes the importance of the constitutional right to freedom of expression and protects and promotes that right, subject only to minimal and reasonable limits, with the intent of authorizing signs that provide members of the public and others with pertinent information relating to upcoming Elections.

ADMINISTRATION

7. The City Clerk shall be responsible for the administration of this Schedule and the Director shall be responsible for the enforcement of this Schedule.

ELECTION SIGNS

8. No person shall display or permit the display of an Election Sign except in accordance with:
 - (a) section 4.1 of this By-law (General Prohibitions and Regulations);
 - (b) section 5.1 of this By-law (Prohibited Signs); and
 - (c) the specific regulations set forth in this Schedule.
9. A person shall be deemed to be displaying an Election Sign if that person has custody of, or control over, the sign or the property on which the Election Sign is located.

TIMING

10. No person shall display or permit the display of an Election Sign associated with a federal or provincial Election, prior to the date the writ of election is issued.

11. No person shall display or permit the display of an Election Sign associated with a municipal Election before 28 days in advance of Voting Day.
12. Notwithstanding section 11 of this Schedule, Campaign Office Election Signs for Candidates may be displayed once a Candidate has filed their nomination papers and paid the required filing fee or a Third Party Advertiser has registered with the City Clerk.
13. Notwithstanding section 11 of this Schedule, Election Vehicle Signs may be displayed once a Candidate has filed their nomination papers and paid the required filing fee or a Third Party Advertiser has registered with the City Clerk.

SIZE

14. No person shall display or permit the display of an Election Sign with a sign area greater than 1.5 square meters when it is located on a property used for residential purposes including:
 - (a) a Single Detached Dwelling;
 - (b) a Semi Detached Dwelling;
 - (c) a Duplex;
 - (d) a Triplex;
 - (e) a Fourplex or Quadruplex;
 - (f) a Street Townhouse;
 - (g) a Mobile Home;
 - (h) a Residential Care Facility for 6 or less residents;
 - (i) a Lodging House for 6 or less lodgers;
 - (j) a Retirement Home for 6 or less residents; or
 - (k) an Emergency Shelter for 6 or less residents.
15. An Election Sign with a sign area larger than 1.5 square meters that is displayed on a property with a use other than as described in section 14 (a)-(k) inclusive of this Schedule, shall comply with all applicable regulations under Part 5 of this By-law provided that no permit, except any permit required under the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, if applicable, is required.

CONTENT

16. Third Party Advertisements, including any Election Signs, shall contain valid and current contact information including the name of the Registered Third Party, the municipality where the Registered Third Party is registered (if applicable), and a telephone number, mailing address or email address at which the Registered Third Party may be contacted. This contact information shall be displayed using a minimum font size of 24. (See section 88.5 of the *MEA*)

17. No person shall display an Election Sign with electronic message display.
18. Except for a sign displayed by the City in accordance with section 4 of this Schedule, no person shall reproduce the City's logo, the logo of the Hamilton Street Railway, the logo of the Hamilton Police Service, the City's municipal election logo, or any other logo in which the City holds an interest, or the City's crest or seal, in whole or in part, on any Election Sign, or Election Campaign Materials. For the purposes of this section, any reference to "City" includes the City's agencies, boards and commissions.
19. No person shall display an Election Sign unless it contains all information required by applicable federal, provincial or municipal law, or any regulation thereunder.

LOCATION

City Property

20. Except as permitted by section 21 and section 23 of this Schedule, no person shall display or permit the display of an Election Sign on City Property.
21. The following Election Signs are permitted on City Property:
 - (a) the holding of a hand-held Election Sign;
 - (b) the display of a Poster in accordance with the regulations set forth in section 5.8.2(f) of this By-law;
 - (c) an Election Vehicle Sign while affixed to a Vehicle that is in use on any Roadway in the City in accordance with all applicable laws and by-laws, or while in use on any roadway as defined in the Parks By-law, or while authorized to be parked in any municipal parking lot, authorized on street parking space, or public parking area or parking space as defined by the Parks By-law; and
 - (d) the display of an Election Sign on commercial advertising space owned or operated by the City or one of its agencies, boards or commissions where the advertising has been approved by the City or one of its agencies, boards or commissions pursuant to the City's Policy for Commercial Advertising and Sponsorship.

Private Property

22. No person shall display or permit the display of an Election Sign on Private Property or display or permit the display of an Election Vehicle Sign on a Vehicle

except with the permission of the owner of the Private Property or owner of the Vehicle as the case may be.

23. No person shall display or permit the display of an Election Sign on any portion of the Road Allowance, excluding that portion of the Boulevard

(a) between the Sidewalk and Private Property line, or

(b) where there is no Sidewalk, between the Roadway and Private Property line.

24. In accordance with section 88.2 of the *Municipal Elections Act, 1996*, owners of, or tenants in, an apartment building, condominium building, non-profit housing co-operative or a gated community may display Election Signs on the premises that they own or lease subject to any reasonable restrictions on the size or type of Election Sign that may be established by the landlord, property manager, co-operative or condominium corporation.

ON VOTING DAY OR ADVANCE VOTING DAY

23. No person shall display or permit the display of an Election Sign:

(a) at a property used as a Voting Place on Voting Day or on an Advance Voting Day; or,

(b) at a property used for the administration of Election processes on Voting Day or on an Advance Voting Day.

(See section 48 of the *MEA*)

24. For certainty, section 25 of this Schedule applies to Election Vehicle Signs.

REMOVAL

25. Candidates and Registered Third Parties shall remove all Election Signs no later than seventy-two (72) hours following 11:59 p.m. on Voting Day of the Election for which the Election Sign was displayed.

26. Notwithstanding section 27 of this Schedule, where an Election Sign has been displayed on Private Property, the owner or occupant of the property shall ensure that the Election Sign is removed within the time frame set out in section 26 of this Schedule.

27. No person shall dispose of an Election Sign on City Property except in receptacles designated for waste or recycling.