

Environment & Sustainability Standing Committee
September 6, 2012

TO: Chair and Members of Environment & Sustainability Standing Committee



SUBMITTED BY: _____
Ken Reashor, P.Eng., Director, Transportation & Public Works

DATE: August 22, 2012

SUBJECT: Flyer Distribution and Litter Strategy

SUPPLEMENTARY INFORMATION REPORT

ORIGIN

April 16, 2012, ESSC - Motion of Committee was passed to recommend a working group be established to look at the issue of distributing unwanted flyers.

BACKGROUND

At the April 7, 2011 meeting of the Environment and Sustainability Standing Committee, the Committee expressed concern respecting unwanted distribution or misplacement of flyers or newspapers. Also noted, similar concerns raised at Marine Drive, Valley and Canal Community Council regarding unwanted flyer distribution.

At the April 19, 2011 meeting of Regional Council, a motion was passed requesting a staff report that would set out a process that would result in the elimination of the delivery of flyers to residential properties.

Subsequently, an Information Report entitled “Unwanted Distribution or Misplacement of Flyers”, was prepared and presented by Legal Services to ESSC on April 16, 2012. The report outlined the legal issues summary with the conclusion that enactment of a By-Law to eliminate or ban flyers was not legally possible.

Based on the report findings, Committee members requested staff develop the framework for establishing a working group to develop options to deal with unwanted flyers. This supplementary report addresses that request.

DISCUSSION

The Provincial government, whose jurisdiction includes litter, has established a working group charged with developing policy for a litter strategy addressing the newspaper industry sector which is the primary distributor of flyers in this province. The working group is being lead by the NS Department of Environment (NSE) and the Resource Recovery Fund Board (RRFB) as per the NS Environment Act and Provincial Solid Waste Management Regulations. Under those regulations, NSE and RRFB are responsible to develop Stewardship agreements with industry. All NS Municipalities are providing input into the working group discussions via the NS Regional Coordinators group. HRM is represented by SWR staff. HRM staff has made known the concerns of Council regarding current distribution practices that contribute to flyers as litter and nuisances.

Areas for discussion with the newspaper industry have been identified to include flyer distribution practices, Opt Out messaging and responding to complaints by residents. Solid Waste Resource staff will continue to provide input into these discussions.

In addition, NSE has advised staff that there is a recognized need to strengthen Part III – Litter Abatement section of the NS Solid Waste Resource Management Regulations. Municipalities will have the opportunity to provide input as part of Regulation review undertaking expected to be launched this fall.

BUDGET IMPLICATIONS

No budget implications are anticipated as a result of this initiative.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

HRM staff will coordinate the provision of input raised by members of the community and brought forward by members of Regional Council and at Community Council and Committee to the Provincial working group and provide feedback from the working group to Committee.

ENVIRONMENTAL IMPLICATIONS


Environmental stewardship and the development of a litter strategy is the purpose of the working group discussions.

ATTACHMENTS

April 16, 2012 ESSC Information Report: “Unwanted Distribution or Misplacement of Flyers”

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Laurie Lewis, Diversion Planning Coordinator, 490-7176

Report Approved by: 
Gord Helm, Manager, Solid Waste Resources, 490-6606

Environment & Sustainability Standing Committee
April 16, 2012

TO: Chair and Members of the Environment & Sustainability Standing Committee

SUBMITTED BY:



Marion F.H. Tyson, Q.C., Acting Director, Legal Services & Risk Management

DATE: April 11, 2012

SUBJECT: Unwanted Distribution or Misplacement of Flyers

INFORMATION REPORT

ORIGIN

Gord Helm, Manager, Solid Waste Resources, requested a report examining the legal basis for a Bylaw designed to control unwanted flyers and/or junk mail.

BACKGROUND

There have been a number of complaints from HRM residents in regard to unwanted ad mail being delivered to their homes. There are also reports of unwanted material being placed at the entrance of driveways, at the side of the road or in ditches. Further, there are complaints of this material accumulating while residents are away.

DISCUSSION

HRM can enact a Bylaw to control unwanted flyers but we cannot outlaw them.

Flyers, junk mail, ad mail, etc., serve a variety of purposes. Most of the material has a commercial purpose, such as promoting a product or service. Other items promote artistic productions, political causes, charity events or provide other types of information. All of this material would be considered forms of expression, regardless of the message. All forms of expression are protected by the *Canadian Charter of Rights and Freedoms*.

HRM cannot ban a form of expression. HRM can, however, place a reasonable limit on that expression.

The first question is whether the Bylaw complies with the enabling legislation. The HRM Charter provides the general power to “regulate or prohibit” as well as the more specific power to make bylaws in regard to nuisances.

The second question is if the power exercised under the Bylaw complies with the general principles governing municipal bylaws. The Supreme Court of Canada has often reiterated the social and political importance of local governments. It has stressed that their powers must be given a generous interpretation because their closeness to the members of the public who live or work on their territory make them more sensitive to the problems experienced by those individuals. Apart from the legislative framework and the general principles of administrative law that apply to them, municipal powers must be exercised in accordance with the principles of the *Charter of Rights and Freedoms*, as must all government powers.

The third question will be if, in fact, the Bylaw is a reasonable limit of the freedom of expression.

The Supreme Court of Canada has considered the question of what constitutes a “reasonable limit” on several occasions. A Court assessing the Bylaw will likely consider the following issues:

First of all, HRM must be able to demonstrate a “pressing and substantial objective.” The law must pursue an objective that is sufficiently important to justify limiting a *Charter* right.

Second, the law must be rationally connected to the objective. If the objective is to reduce litter, prevent the build-up of material that may indicate the resident is away, etc., then it is easier for a total ban to satisfy the rational connection step. The City of Saint-Hyacinthe restricted only commercial signs on the grounds of visual pollution and driver distraction. The Supreme Court of Canada found that the Bylaw was not rationally connected to the objectives because it was selective.

Third, the right must be impaired no more than reasonably necessary to achieve the objective. In contradiction to the above, a total ban is harder to justify under the minimal impairment step. A full prohibition will only be constitutionally acceptable under this stage where the government can show that only a full prohibition will enable it to achieve its objective. If a partial ban would also achieve the state's objective, a total ban will fail this step.

The concept that the law should impair "as little as possible" the right or freedom in question is the most common reason that laws "fail" court scrutiny. The courts have often held that other legislative options were available which would still accomplish the desired objective but would impair the right less than the law that was enacted.

Finally, the Court will consider if the deleterious effects of the impairment outweigh the benefits achieved in pursuit of a pressing and substantive objective. The practical effects of the law (in terms of the collective good it represents) are measured against the limitation to the right.

The City of Ottawa enacted an Admail Reduction Bylaw in 2003. A summary of the Bylaw is below:

1. A resident may place a "No Junk Mail" sign on their mailbox or mail slot.
2. No distributor or their agent may deliver any unaddressed material to a property where a "No Junk Mail" sign is visible.
3. On properties where junk mail is accepted, it must be placed:
 - a) in a mail box;
 - b) in a mail slot;
 - c) in a receptacle identified for this purpose;
 - d) on a newspaper rack or hooked to it;
 - e) in an apartment building lobby; or
 - f) on the door handle if the junk mail is delivered in a bag.
4. No delivery shall be made between 9pm and 8am.
5. The "No Junk Mail" sign does not apply to:
 - a) newspapers delivered to paid subscribers;
 - b) community newspapers;
 - c) material produced in the context of a campaign for elected office; or
 - d) information circulars produced by governments or their agencies.

BUDGET IMPLICATIONS

If HRM was to adopt a Bylaw, there would be a cost for:

1. Staff time to administer the program
2. Staff time to enforce the bylaw; and
3. Staff time to prosecute violations.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

N/A

ATTACHMENTS

None

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Josh Judah, Senior Solicitor, 490-4226

Report Approved by: Marion F.H. Tyson, Q.C., Acting Director, Legal Services & Risk Management, 490-4226
