SUBJECT: Information Report - Status of the Implementation and Enforcement of the Hamilton Sign By-law (PED05172(d)) (City Wide)

RECOMMENDATION:

(a) That Report No. PED05172(d) be received for information.

(b) That the review process, as set out in Report PED05172(d), currently being undertaken respecting By-law No. 06-243, being the Hamilton Sign By-law, and the enforcement thereof, be endorsed.

(c) That staff be authorized and directed to submit a comprehensive recommendation report by the fourth quarter of this year, including proposals to implement best practices respecting enforcement and a definitive assessment of the effectiveness of the subject regulations.

EXECUTIVE SUMMARY:

At its meeting of August 9, 2006, Council approved Item 16 of the Fourteenth Report of the (former) Planning and Economic Development Committee, being Report No. 06-014, which included Report No. PED05172(b), entitled “Sign Study and By-law Final Report”. At that same meeting, Council enacted By-law No. 06-243, being the Hamilton Sign By-law, which was to come into force and effect on February 1, 2007.
Included in the aforementioned report was the following recommendation:

(v) That the General Manager of Planning and Economic Development be directed to report back to the Planning and Economic Development Committee by June 2008 regarding the application of the new Sign By-law including any recommendations for changes as may be applicable at that time.\(^1\)

Accordingly Report PED05172(d) is intended to advise the Committee as to the current status of the Hamilton Sign By-law and the enforcement program attendant thereto.

Due to the fact that staff were originally directed to focus on “education” respecting the Sign By-law and also given that a Judicial Order to establish “set fines” respecting the regulations under the Hamilton Sign By-law was not issued by the Regional Senior Justice until March of 2008, enforcement of the By-law has, until recently, been limited to concerted efforts to achieve compliance through education, warnings and persuasion and, in cases where all else failed, through the impound of signs posted or erected in violation of the regulations. To further complicate matters, the Municipal Law Enforcement Officers originally dedicated to the enforcement of the subject By-law are now being redeployed in accordance with the reorganization of the Planning and Economic Development Department and the establishment of the Parking and By-law Services Division and, as a result, the responsibility for enforcement of the By-law is undergoing reassignment.

As a consequence of the foregoing, there is insufficient information available to present a comprehensive report at this time. Staff, therefore, commits to the submission of a detailed recommendation report in the fourth quarter of this year, in consultation with key stakeholders representing the sign industry in the City of Hamilton. Said report will include a revised enforcement strategy that is consistent with the Department’s mandated reorganization and various proposals respecting amendments to the Sign By-law to improve its effectiveness.

**BACKGROUND:**

In 2005 Martin Rendl Associates was hired to conduct a Sign Study and provide the City with a harmonized Sign By-law and, in December 2005, a “Proposals Report” was submitted to Council. At that time, Council directed that the Proposals Report be presented at another series of public consultation sessions, which were conducted during January and February of 2006. In 2005 and the first months of 2006 a total of 14 scheduled public consultation sessions were held, as were numerous meetings with individual stakeholders and organizations including,

- The Hamilton Association of Business Improvement Areas (HABIA);
- The Hamilton-Halton Home Builders Association (HHHBA);

\(^1\) Report No. PED05172(b), Recommendation “(v)”., Dan Mousseau
• The Hamilton Chamber of Commerce;
• The Stoney Creek Chamber of Commerce;
• The Ancaster Community Council;
• The Hamilton-Wentworth Portable Sign Association;
• The Realtors’ Association of Hamilton-Burlington; and,
• The Advisory Committee for Persons with Disabilities.

Pursuant to the completion of the public consultation sessions described above, the original draft of the Hamilton Sign By-law was revised and an interim enforcement strategy was developed. On June 22, 2006, the Planning and Economic Development Committee approved Item No. 6.1 on its agenda, being Report No. PED05172(a) dated May 30th, 2006 and, subsequently, Report No. PED05172(b), entitled “Sign Study and By-law - Final Report” was endorsed by the Committee of the Whole on August 8, 2006, following a redraft of the original report on July 21, 2006.

The “Final Report” and the By-law attendant thereto was intended to address all aspects of signage within the amalgamated City, including but not limited to:

• Portable/Temporary Signs
  o Contractors Signs
  o Real Estate Signs
  o A-frame Signs
  o Mobile Signs
  o Inflatable Signs
  o New Home Builder Signs
  o Election Signs
  o Banners
  o Posters
  o Tourist Oriented Directional Signage

• Permanent Signs on Private Property
  o Ground Signs
  o Wall Signs
  o Projecting Signs
  o Roof Signs
  o Billboards
  o Signs on City Property

Further, the proposed harmonized Sign By-law was intended to achieve the following:

• The protection of public safety;
• The facilitation of aesthetic improvements to the City such that signage would be integrated with the architecture and landscaping not only to identify and inform, but also to complement and enliven the streetscape;
• The provision of a flexible means for commercial and industrial enterprises to adequately identify themselves and their products or services, recognizing that the primary function of signage is to identify, rather than advertise;
The encouragement of improvements to the quality of sign design;
The provision of an easily understood and administered set of objective guidelines by which signs may be regulated; and,
The administration and enforcement of such additional requirements as may be approved by Council.

To date, notwithstanding the fact that enforcement has, until the 2008 Budget process been limited to education, enforcement staff have documented a number of flaws in the language of the By-law and in the enforcement strategy currently in place, which impedes the accomplishment of the above mentioned goals and staff are, currently, in the process or re-evaluating both the regulations and the manner by which they are enforced in an effort to identify appropriate solutions. Additionally, members of the sign industry have also come forward with concerns respecting the By-law, in its current manifestation, and meetings with representatives of the industry are being scheduled for the near future to document these concerns and such solutions as may resolve them.

Staff, therefore, proposes to submit, in the fourth quarter of 2008 with the Committee's consent, a comprehensive report on their findings and an amending by-law, which will address the defects in the existing legislation and satisfy the concerns brought forward by the industry.

**ANALYSIS/RATIONALE:**

As of amalgamation in 2001, the City was responsible for enforcing in excess of a dozen pre-existing by-laws regulating signs in the geographic areas representing the former municipalities of Ancaster, Dundas, Flamborough, Glanbrook, Hamilton and Stoney Creek and the former Regional Municipality of Hamilton-Wentworth. The pre-amalgamation by-laws lacked uniformity with respect to definitions, terminology and regulatory content and were, therefore, inefficient to administer and a source of confusion and frustration for the sign industry, the business community and the public at large.

As was the case with other municipal by-laws, the Council of the day concluded that a harmonized by-law should be developed and enacted to resolve the conflict arising out of the existence of multiple by-laws regulating signs. In 2005, the consulting firm of Martin Rendl Associates was engaged to conduct a sign study and to assist in the development of a harmonized Sign By-law for the City.

Past experience and the precedents established by the Courts at the Federal level indicated that extensive public and stakeholder consultation would be required in order for any By-law to survive Constitutional challenges and, accordingly, during July and August of 2005 and January and February of 2006 some 14 scheduled public consultation sessions were held during which stakeholders were invited to present their perspectives respecting the nature of such legislation as might replace the by-laws then extant. The outcome of these public consultations is documented in Report PED05172(b), which was approved in July of 2006.
Shortly thereafter, two Municipal Law Enforcement Officer positions were created and dedicated to proactive sign enforcement. Said resources were deemed a critical component of the implementation of the Hamilton Sign By-law, since without adequate proactive enforcement, the By-law would not be effective in terms of providing a level playing field for the industry as well as providing the community with a more pleasant and satisfying appearance through the management of visual pollution.

It was recognized, at the time, that an initiative of that size would have citywide consequences and that there would be 'growing pains' while the By-law was being applied, since situations would arise that could not have been anticipated and which were not, therefore, addressed by the By-law. As it turns out, a number of assumptions which were made in 2005 and 2006, have turned out to be inaccurate, to varying degrees, including but not limited to, the revenues that were expected to be generated and the efficacy of limiting enforcement to a dedicated “two officer” team. Unfortunately, staff is of the opinion that many of the conclusions drawn between August of 2006 and May of this year respecting the By-law and its enforcement cannot be entirely relied upon as being accurate, since the critical component of set fines, necessary for enforcement under Part I of the Provincial Offences Act, was not established by the Province until March of this year and since staff had been instructed to initially focus almost entirely upon the educational component until the commencement of the 2008 Budget process, both of which preclude an accurate evaluation of the interim enforcement program as it was originally designed.

**ALTERNATIVES FOR CONSIDERATION:**

The only alternative available for consideration, in staff’s view, is the possibility of foregoing the submission of the proposed comprehensive report and the enactment of the associated amending by-law. This alternative, however, would result in the continuance of an intrinsically flawed by-law and the perpetuation of enforcement protocols that are inherently ineffective.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial Implications**

The anticipated full-year cost for two Sign By-law enforcement staff, including benefits, office equipment and vehicle operating costs, was estimated to be in the order of $150,000 in addition to a one-time cost of approximately $56,000 for the initial purchase of two vehicles and office equipment for the above mentioned enforcement staff. Further, based upon a survey of neighbouring municipalities with respect to sign fees, regulations, revenues, etc. staff expected that proactive enforcement and the implementation of the permit fees now in place would generate revenues in the order of $280,000 per annum.

At this juncture, permit and fine revenues are nowhere near the originally estimated levels, falling short by over $183,000\(^2\) as a consequence of not having set fines and the

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\(^2\) Annual Budget Variance Report for 2007
directive to initially focus on education. Due to the lack of set fines and the education directive, it is impossible to ascertain whether the shortfall is a result of an inaccurate initial estimate or due to less than effective enforcement. While staff might suggest that the loss of potential revenues is likely due to a combination of both factors, without further study, under conditions that remove the enforcement issues from the equation, a realistic determination of probable revenues cannot be undertaken.

It should be noted that, during the 2008 budget process, the Budget Committee indicated that enforcement was to be ramped up in an effort to mitigate the aforesaid shortfall and, since that time, sign permit sales have seen a dramatic increase from 43 permits per month to over twice that number. That said, the impact of the set fines as a deterrent to non-compliance remains, as yet, unevaluated.

**Staffing Implications**

As stated earlier, the staff complement for the Parking and By-law Services Division, which has carriage of the subject legislation, is subject to redeployment. At the end of the day, however, the number of Officers authorized to enforce the Hamilton Sign By-law is not likely to be reduced to less than the two (2) FTE originally dedicated to that function save and accept at the will of Council. Accordingly, there are no significant staffing implications to report.

The foregoing opinion aside, however, it is acknowledged that “team-based” enforcement has been approved by Council and it is further noted that a priority response protocol will be brought to Council for consideration in the near future. With these facts in mind, staff would suggest that the commitment of resources to enforcement of the Sign By-law remains subject to revision in accordance with Council’s desires respecting by-law enforcement in general.

**Legal Implications**

At this time, there are no legal implications to report. However, an amending by-law will undoubtedly be included for consideration with the submission of the proposed comprehensive report in the fourth quarter of 2008.

**POLICIES AFFECTING PROPOSAL:**

Some of the policies affecting this proposal and the original recommendations set out in Report No. PED05172(b) include:

- The Hamilton Strategic Plan;
- The Hamilton Accessibility Plan;
- The Downtown Secondary Plan;
- Site Plan Guidelines; and,
- The Keep Hamilton Clean initiative

**RELEVANT CONSULTATION:**
Staff intends to consult with the various Business Improvement Areas, a number of representatives of the sign industry who have already expressed a desire to contribute to the review of the by-law and the enforcement practices attendant thereto, and such other stakeholders as might indicate an interest in participating in the process. It should be noted that staff is in receipt of an email from Ms. Diane Gibbs of Magnetsigns Hamilton Inc. indicating that her company and Magnetsigns Stoney Creek, All-Ontario Signs, Active-Media, and Acclaim Signs are looking forward to an opportunity to participate in the industry consultations.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No

Public services and programs will be delivered in an equitable manner, and be coordinated, efficient, effective and more easily accessible to all citizens. Revisions to the Sign By-law and the City’s enforcement practices will result in regulations that are more equitable and easier to understand and administer.

Environmental Well-Being is enhanced. ☑ Yes ☐ No

Human health and safety will be enhanced. Revising the Sign By-law and the City’s enforcement program will further reduce clutter and eliminate more of the unsightly posters currently seen in the City. It should also make travel along City streets and sidewalks more enjoyable and safer.

Economic Well-Being is enhanced. ☑ Yes ☐ No

Investment in Hamilton will be enhanced and further supported. Numerous Sign Companies have indicated that a fair, balanced and effectively enforced By-law will preserve and possibly enhance their investment in the City. A regulated sign industry with proactive enforcement will also provide for more effective signage throughout the community. Improvements to the by-law and the strategies employed in its enforcement will further contribute to this outcome.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

The Triple Bottom Line (community, environment and economic implications) will be further satisfied given that the community will enjoy the benefits of a By-law that resolves many of their concerns about urban blight, safety, clutter, etc. Improvements in the By-law will further support the environment by reducing the amount of debris and the waste of valuable resources. Finally, the business community will receive improved services that will balance of their respective rights to advertise by virtue of enhanced equity and opportunity. The City should also a benefit through the development of a more coordinated and streamlined administrative process.
Do the options you are recommending make Hamilton a City of choice for high performance public servants?

☐ Yes  ☐ No

A review of the Sign By-law and the enforcement protocols associated therewith will result in regulations that will be easier to understand by the industry and the public, and easier for staff to administer and enforce. These factors, with Council and Senior Management Team support, should foster pride in the workforce, knowing that they are providing a valuable service to the community and City as a whole.