



# REPORT

## Council

**Meeting Date: June 19, 2023**

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**FROM:** Municipal Enforcement Services Department

**DATE:** June 6, 2023

**SUBJECT:** Sponsorship Signage for BIAs

**LOCATION:** Town-wide

**WARD:** Town-wide

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### **RECOMMENDATION:**

That staff recommend no changes to the Sign By-law 2018-153.

### **KEY FACTS:**

The following are key points for consideration with respect to this report:

- Council requested that staff review options to allow sponsorship acknowledgment on signs used for certain programs and activities
- Any form of sponsorship on a sign would be considered third-party advertising
- Staff from Municipal Enforcement Services and Legal have reviewed this request in the context of existing sign regulations, which include third-party advertising sign regulations that have been the subject of significant litigation
- It is recommended that any change to the town's third-party sign regulations, if a change is to be considered, be done through a comprehensive review including significant public consultation

### **BACKGROUND:**

At the August 9, 2022, Meeting of Council, the following request for report was approve:

1. Whereas our BIAs through the Municipal Act and order of Council work to enhance the beautification and success of the commercial districts, and
2. Partnerships with different businesses enable them to provide greater opportunities for events, experiences and support for our businesses to thrive; and

3. Recognizing sponsors/partners is both community building and respectful of their contribution to the life and success of our business districts and Oakville and that there are currently limitations within our Sign bylaw that impact the ways the BIAS can recognize the contribution and efforts of sponsors and partners on signage for an event or activity;

Therefore, staff be requested to report back on options to allow the BIAs to recognize sponsors on signage for specific programs and activities.

Currently, the Sign By-law allows charitable signs, which permit advertising for not-for-profit or charitable events by a not-for-profit organization, charity, place of worship, or school board, but does not permit the sign to promote a business or product. The Sign By-law allows an event corporate sponsor to be recognized on a community mobile sign (only allowed on town property) provided the recognition of the corporate sponsorship encompasses no more than 15% of the sign area.

Under the Sign By-law, “third-party advertising sign” means “a sign advertising a business, service or product that is not available on the same property where the sign is displayed.”

Any form of sponsorship on a sign would be considered “third-party advertising”.

The Sign By-law regulates third-party advertising signs as follows:

- Permitted only within employment land use designations (generally industrial zones)
- Permitted on ground sign (includes size restriction of up to 7.5m<sup>2</sup> or 80sf upheld by the Supreme Court of Canada), or mobile sign
- One advertising sign on the same property except where a property has a frontage greater than 300.0 m, an additional advertising sign is permitted for every additional 300.0 m of frontage
- 200 metre minimum separation distance from: any property within a residential zone or legally used for residential; any property used for a school or park; any property designated under Part IV or V of the Ontario Heritage Act; or any 400 series highway.

### **Why does the Town regulate third-party advertising signs?**

The objectives of the town’s third-party advertising sign regulations include preserving of Oakville’s distinct visual and aesthetic character, prevention of clutter in the landscape and driver safety.

The town’s regulation of third-party advertising signs has been the subject of much judicial consideration at various levels, including the Ontario Court of Appeal (on successive occasions) as well as the Supreme Court of Canada (SCC). Below

contains a summary of the town's regulation of third-party advertising signs.

### **1994 Sign By-law – Prohibition on billboards and third-party signs**

In 1994, the town enacted a sign by-law that prohibited billboard signs larger than 7.5 square metres (80 square feet). The 1994 by-law also prohibited the erection of any "third-party signs".

In 2002, the Ontario Court of Appeal quashed both prohibitions contained in the 1994 sign by-law on the basis that the prohibitions contravened section 2(b) of the *Charter* (freedom of expression) and could not be saved under section 1 as a reasonable limit. However, the Court acknowledged that the town had legitimate objectives for enacting the by-law, such as preservation of Oakville's distinct visual and aesthetic character, prevention of clutter in the landscape and driver safety.

The town sought and obtained leave to appeal to the SCC in respect of the billboard size restriction. The SCC upheld the size restriction (80 square feet) on billboards.<sup>1</sup> This is not industry size for billboards.

### **2004-2005 Review**

The town subsequently embarked on a comprehensive review process for removing the prohibition against third-party signs from the 1994 by-law and replacing it with a more permissive regime but tailored to achieve the legitimate objectives recognized by the Court. The town established a Working Group and retained an independent sign consultant, which considered several principles for locating advertising signs, having regard to the town's existing character, including the following:

- Additional structures in the streetscape should be minimized;
- Advertising signs should not be in residential areas and should be located a sufficient distance away from residential areas so that they are not visible from residential areas or do not impact on their character; and
- Advertising signs should not be located at the major entry points to the Town or within areas that act as gateways to the Town.

Following the completion of the review process and public consultation, the town adopted By-law No. 2006-005, which allowed third-party signs, but imposed criteria restricting the permissible locations for such signs (only in E2 industrial zones, not within 200m of key intersections, etc).

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<sup>1</sup> *Vann Niagara Ltd. v. Oakville (Town)*, [2002] OJ No 2323, 60 OR (3d) 1, rev'd in part [2003] SCJ No 71

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### **2006 Sign By-law – challenge to third-party sign regulations**

In 2007, the third-party sign regulations in the 2006 by-law were subject to a challenge by way of a Court application. The basis for the challenge was that the cumulative effect of the locational criteria was to permit third-party signs in only 9 locations across the town, none of which were commercially viable according to the applicant.

Following an appeal by the town, in 2008, the Court of Appeal held that that the objectives of the 2006 by-law, namely, preservation of Oakville's distinct visual and aesthetic character, and the prevention of clutter in the landscape, were pressing and substantial and rationally connected to the by-law provisions, as was the objective of driver safety. However, the Court held that the cumulative effect of the impugned by-law provisions was unduly restrictive and did not minimally impair the right to freedom of expression. The Court of Appeal provided some specific guidance on how the 2006 By-law could be amended to minimally impair the section 2(b) *Charter* right, as follows:

- allow for more than one sign per property where the property has a very large frontage.
- allow third party signs in “non-prestige” industrial zones located outside of the E2 zones.
- allow third party signs on very large properties where there is a large portion consisting of open space.
- allow for signs near some of the listed north-south roads or portions of the listed roads.<sup>2</sup>

### **2009 Review**

In 2009, after the Court of Appeal decision, the town convened a new Working Group as well as an external planning consultant and initiated public consultation to develop new criteria to replace the provisions in the 2006 by-law that had been declared invalid.

At a series of public consultations, the Working Group put forward several potential replacement criteria for consideration. Representatives of the sign industry, members of the business community and town residents attended the consultation sessions and written submissions were also received by e-mail. The Working Group heeded the Court of Appeal's suggestion that it allow third-party signs in “non-prestige” industrial zones and extended allowable zones for third-party signs to include the E1 (Light Industrial) Zone, in addition to the E2 (General Industrial) Zone. However, the Working Group concluded that to allow the signs in the only remaining industrial zone,

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<sup>2</sup> *Vann Media Inc. v. Oakville (Town)*, [2008] OJ No 4567, 95 OR (3d) 252

T1 (Transition Employment), would conflict with the valid provision which seeks to maintain a buffer from residential zones, as the T1 areas are generally near residential areas. To balance these increased locational opportunities with the town's objectives of aesthetics and visual clutter, numerous additional locational criteria were also proposed to be added (including a cap of 70 on the total number of advertising signs – 35 mobile signs and 35 ground signs).

The revised criteria proposed by the Working Group were ultimately accepted by Town Council through the enactment of an amendment to the Sign By-law, By-law No. 2009-059.

Following the completion of the 2009 review process and amendments, no Court applications to quash were brought within the 1-year time limit set out in the *Municipal Act*.

### **2009 Sign By-law amendments – challenge to advertising sign regulations**

In 2012, By-law Services issued three tickets to a mobile sign company for erecting signs contrary to the Sign By-law, namely, advertising signs on property zoned other than E1 or E2. The contraventions were admitted, but the sign company argued that the regulations constituted a violation of freedom of expression. On appeal by the town, in 2014, the Ontario Court of Justice upheld the town's advertising sign regulations as a reasonable limit on freedom of expression.<sup>3</sup>

### **Sign By-law 2018-153**

The existing third-party sign regulations were confirmed through the last sign by-law review prior to passage of the current Sign By-law 2018-153, namely, that the regulations established by the 2009 comprehensive review are still appropriate.

### **COMMENT/OPTIONS:**

The right to freedom of expression under the *Charter* protects commercial advertising. As such, any sign regulations restricting such expression must be carefully considered. A confidential report from the Legal report appears elsewhere on the agenda to provide legal advice on this issue.

The third-party sign regulations contained in the sign by-law are intended to maintain the town's community character by ensuring signs are compatible with their surroundings and reflect the town's unique character, overall planning and design objectives and contribute positively to a livable built environment.

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<sup>3</sup> *Town of Oakville v. 1676929*, [2014] OCJ

### Options

Staff recommend that any changes to the town's third-party advertising sign regulations, including sponsorship signs, should occur through a comprehensive review and public consultation process.

If Council would like to further consider options to expand sponsorship opportunities on signs in commercial areas of Oakville, staff recommend approval of the alternate recommendation below.

### Alternate Recommendation

1. That staff be directed to prepare a budget to conduct a comprehensive review, including public consultation to obtain input into the appropriate locational criteria governing third-party advertising signs, including sponsorship signs, having regard to the objectives that the town seeks to achieve and the need to achieve them in a manner that impairs the rights of advertisers as minimally as possible, and
2. That this request be included as part of the 2024 budget deliberations.

### **CONSIDERATIONS:**

#### **(A) PUBLIC**

The public and BIAs will be notified of a review, together with the sign industry, in the event Council resolves to conduct a comprehensive sign by-law review dealing with third-party advertising signs, which includes sponsorship signs.

#### **(B) FINANCIAL**

There are no immediate budgetary impacts, although if Council adopts the alternate recommendation, a project budget will be prepared for the 2024 budget committee's consideration.

#### **(C) IMPACT ON OTHER DEPARTMENTS & USERS**

The town's legal department has been part of this review. If Council directs a review process, staff from several town departments such as Legal, Planning and Municipal Enforcement will be required.

#### **(D) CORPORATE STRATEGIC GOALS**

This report addresses the corporate strategic goal(s) to:  
Be an Accountable Government, by continuing to review by-laws and policies that impact Oakville residents.

#### **(E) CLIMATE CHANGE/ACTION**

N/A

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