

TO: CITY MANAGER 1998 August 18

FROM: DIRECTOR PLANNING & BUILDING

SUBJECT: SIGNS ON POLES

PURPOSE: To respond to a letter from Joy Gilmore regarding signs placed on poles

RECOMMENDATIONS:

1. **THAT** Council support the installation of additional poster cylinders as outlined in section 3.2 of this report.
2. **THAT** Staff be authorized to prepare the necessary amendment to Burnaby Sign Bylaw 1972 regarding poster cylinders, as outlined in section 3.2 of this report.
3. **THAT** a copy of this report be mailed to:

Joy Gilmore
 4829 Woodglen Court
 Burnaby, B.C.
 V5G 2X8

R E P O R T

1.0 BACKGROUND INFORMATION:

On 1998 July 27, Council received an item of correspondence dated 1998 July 10 from Joy Gilmore expressing concern about signs placed on poles in Burnaby. Ms. Gilmore's letter commented that such signs give Burnaby streets an unsightly appearance.

At its meeting of 1996 August 12, Council received a report (Item 07, Manager's Report #21), regarding the enforcement of bylaws that regulate signs. That report was prepared in response to a resident's letter about the proliferation of election and development signs on City boulevards. It was noted in that report that signs in Burnaby are regulated by two bylaws.

The Burnaby Street and Traffic Bylaw 1961 prohibits the placement of signs on City streets, unless Council approval has been granted. Specifically, section 24(1) of the bylaw states that:

“No person shall excavate in, do or construct any works upon, cause a nuisance upon, encumber, obstruct, injure, foul, or damage any portion of a highway or other public place without written permission to do so from the Council and except under such terms and conditions as may be imposed by the Council in such permission.”

Burnaby Sign Bylaw 1972, section 5.3, also prohibits signs from being displayed on public property, except for specifically mentioned signs including awnings, traffic control signs, and bus shelters. Clearly, signs placed on hydro, telephone or other poles, are not permitted by either bylaw.

As was noted in the earlier report, staff in the Engineering Department routinely remove signs from public property, including those found attached to poles. While such action may be prompted by complaints, it is also a part of the litter crew’s general duties. . Most signs are nailed to wood poles but those that are pasted on metal poles have to be scraped off with care so that the paint is not chipped. Staff have indicated that many signs are being placed higher up poles, thereby requiring the use of special tools and sometimes creating potentially dangerous situations. Staff take extra care when removing such signs. Staff also often try to contact repeat offenders to advise them of the bylaw violations.

In response to a request of the Hastings Merchants’ Association, aluminum poster cylinders were installed along Hastings Street approximately a year ago. The cylinders were ordered from the City of Vancouver, where a poster kiosk program was already in existence. The cylinders are approximately 3 feet high and wrap around light or street sign poles. There are roughly 15 cylinders along Hastings Street, located at intersections, on both sides of the street. Anyone may place notices on the cylinders which are cleaned by Burnaby staff once a week. Although these cylinders are fairly well used, signs are often still affixed to ordinary poles.

2.0 EXPERIENCE OF OTHER MUNICIPALITIES:

The District of West Vancouver’s Sign Bylaw specifically prohibits posters or placards from being “placed on private or public property which includes service and utility poles...”. District staff adhere to a generally proactive policy, often removing posters on a daily basis. Businesses or individuals identified on the signs are usually contacted by staff and advised of their bylaw offense. In some instances, staff will request the owner remove the sign themselves.

The City of Vancouver’s Street and Traffic Bylaw includes a section on defacing poles. It states that, “No person shall paint, paste, stick or affix or put any sign, bill, notice, substance or thing on any street furniture, light standard, electric light, telephone or other pole located on any street...”. One staff member is specifically assigned to removing illegal signs in the downtown peninsula. A different crew patrols major streets and removes signs as required.

Earlier this year, the City of Vancouver laid charges under its Street and Traffic Bylaw against someone who had put up posters on a pole (Malmo Levine case). The Court found the charged not guilty due to the unconstitutionality of the City’s bylaw. Several years ago, the City of Peterborough, Ontario,

encountered the first such test of its sign bylaw (*Ramsden v. Peterborough (City)*(1991)). It had laid charges against a musician who had put up posters announcing his band's upcoming performances, on a city-owned hydro pole. An existing City bylaw prohibited the placing of posters and signs on any public property. Although a conviction was granted, the defendant appealed. The Provincial Court judge held that the bylaw provision unduly interfered with the defendant's right to freedom of expression under the Charter of Rights and Freedoms. The Court accepted the bylaw's objectives of safety, preventing traffic hazards, and preventing visual and aesthetic blight. However, the *absolute* prohibition against postering too severely infringed on the right of expression and was thus found constitutionally invalid. The conviction was overturned.

The recent City of Vancouver case was appealed and will be retried. The City's bylaw, however, does not completely prohibit postering. The "defacing poles" section does not apply in certain circumstances, including when a person affixes "a sign or notice to a kiosk provided or authorized by the City Engineer specifically to be used by the general public for the posting of notices". The City has manufactured and installed 84 such kiosks on major streets. Anyone may put up posters on the kiosks, although poster companies are also involved. The kiosks are cleaned once a week.

3.0 CONTROLLING THE PLACEMENT OF SIGNS ON POLES IN BURNABY:

3.1 Enforcement

Engineering Department staff currently remove signs from poles on a complaint basis, as well as monitor them on a regular basis. Given their other tasks, it may be difficult for such staff to be more proactive. Unlike Vancouver, where there are dedicated staff for sign removal, or West Vancouver, which is substantially smaller, Burnaby is faced with a large geographic area and limited staff resources in this regard. It may be possible to provide an additional emphasis for existing litter collection staff to conduct more sign patrols, pursue voluntary compliance by contacting identified businesses, or simply to remove more signs from poles. More proactive involvement, however, must be considered within the context of possible service reduction elsewhere. Alternatively, additional staff would be required.

Stronger action against offenders may also be desired. Bylaw offenses can be pursued through Provincial Court. Crown Counsel, however, is often unable to accept bylaw charges, particularly if there is not a substantial likelihood of conviction, or if it is not in the public interest to proceed.

A Municipal Ticket Information (M.T.I.) is another means of enforcement which has been adopted by many B.C. municipalities. The system allows tickets to be issued for specified bylaw offenses. If the ticket is paid, a fine is collected, and hopefully the offense resolved. If the ticket is not paid within 14 days, a deemed conviction results and the municipality must still find a way to collect the fine, and gain compliance (i.e., removing the sign). If the ticket is disputed, prosecution proceeds through Provincial Court.

Some of the issues surrounding implementation of an M.T.I. system include identification of the offender and service of the ticket. As well, the possibility of significant amounts of staff time in Court must be considered. To date, Burnaby has not adopted the M.T.I. In any event, neither the M.T.I., nor

normal prosecution through the Courts, appear practical for dealing with signs on poles. In the meantime, staff will continue to remove such signs and posters when complaints are received and when resources permit. They will also continue to notify businesses who repeatedly choose this illegal form of advertising.

3.2 Install more poster cylinders

As noted above, there are approximately 15 poster cylinders along Hastings Street. They are relatively inexpensive to purchase and easy to install. Given their size and eye level height, the cylinders are oriented primarily to pedestrians. As has been shown by the Hastings example, the poster cylinders do not compromise an area's urban design. Sufficient funds are available in the Engineering Department's operating budget for the purchase of approximately 10 more poster cylinders. The maintenance of these additional cylinders could be managed by existing staff resources.

Should Council express support for the installation of more cylinders, Engineering Department staff will identify suitable locations which may be those that have been problematic. A minor amendment to the sign bylaw will be required to recognize that approved poster cylinders are permitted on public property.

Recognition and expansion of the poster cylinder program offers another potential advantage. It may help avoid future legal difficulties. The City will be providing opportunities for expression by allowing posters to be put on designated poles, in approved locations. Staff also propose to ensure the public is aware of this service by including an article in next available issue of Information Burnaby. It will also be noted in the article that it constitutes an offense to put signs on poles where approval has not been granted.

4.0 CONCLUSION:

Even with an expanded enforcement program, or the provision of additional, legal posting locations, businesses will still in all likelihood, put signs on poles. This is a form of virtually free advertising, widely used in urban settings, that can probably never be totally eradicated. However, a stepped up patrol and sign removal program will assist in preserving the aesthetics of Burnaby's urban landscape. Allowing people to put up signs on designated poles is a positive action that at the same time can limit the spread of undesired advertising.



D.G. Stenson
Director Planning & Building

TDA/ds
cc: Director, Engineering
(Attn.: Superintendent - Sanitation
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City Solicitor
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