



THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE REPORT

Subject: Election Signs By-laws Review
Director: Corporate Services
Manager: Legislative Services
Report Number: Legislative Services-2023-14
Meeting Date: Wednesday, July 5, 2023

Recommendation:

That Council receive Report Legislatives Services 2023-14; and

That Staff be directed to review the Election Sign By-law prior to the 2026 Municipal Election and direct staff to investigate and promote environmentally friendly election signs in future elections; and further

That the Municipality demonstrate leadership and reduce with a view to eliminating the use of similar temporary signs as a method of communication.

Date to be considered by Council: Wednesday, July 5, 2023

Report Summary:

The Municipality of Kincardine regulates election signs through the Election Sign By-law No. 2022 - 023, reviewed and adopted by Council in the spring of 2022. On May 8, 2023, Council directed Staff to “bring forward for Council’s consideration, amendments to the Election Sign By-law to prohibit the use and placement of all election signs on all public property.” One of the main reasons for this request was to reduce the environmental impact of elections signs. After a review of this by-law including a comparative review, advice from legal counsel, and consultation with internal stakeholders, Staff are recommending that the Election Sign By-law remain unchanged in order to continue to support candidate’s right to freedom of expression as guaranteed under section 2(b) of the Charter of Rights and Freedom. Instead, Staff are recommending that during upcoming elections, the Municipality endeavor to promote environmentally friendly election sign materials and develop and disseminate education materials around the reuse, recyclability and disposal of election signs. In addition, they recommend that the Municipality demonstrate leadership by

reducing or eliminating the use of similar temporary signs as a method of communication.

Origin: Resolution #05/08/23 – 05 “That Staff be directed to bring forward for Council’s consideration, amendments to the Election Sign By-law to prohibit the use and placement of all election signs on all public property.”

Existing Policy: Election Sign By-law No. 2023 - 023

Background/Analysis: As permitted by the Municipal Act, 2001, during municipal, provincial, and federal elections, the placement of election signs on municipal land is restricted by By-law No. 2023 – 023 to the on all Municipally owned land within the Municipality of Kincardine except road allowances and any premises used as a voting place. On private property election signs are restricted when placed without the consent of the owner and if the sign is deemed to interfere with the safe operation of vehicular traffic or with the safety of pedestrians.

Resolution #5/08/23 – 05 asked Staff to bring forward amendments to the By-law to prohibit the use and placement of all election signs on public property. The direction was to try to eliminate the inevitable environmental waste that typical election sign materials create. To investigate this request, Staff

- completed a comparator review with regulations for elections signs in other municipalities;
- sought a legal opinion to determine what, if any, authority the Municipality has to restrict election signs and whether such restrictions would be permissible under the Canadian Charter of Rights and Freedoms (the Constitution Act, 1982); and
- reviewed the number of service requests and enforcement data available from the 2022 municipal and provincial election.

Comparator Review

Staff reviewed election sign by-laws from other municipalities in Bruce County and larger urban centres such as Guelph, Oakville, Collingwood, and Ottawa. During the review, Staff found that most municipalities do restrict election signs to one degree or another on public property. There were very few restrictions placed on election signs on private property and most related to public safety concerns and the size and number of election signs on private property.

The timeframes for the placement of election signs were consistent with the drop of the Writ for provincial and federal elections. For municipal elections the timeframe varied but the most common were like the Municipality’s current sign by-law allowing signage to be placed after nomination day.

It is noted that some municipalities around the Province can recycle signs made from corrugated plastic (coroplast) as part of their current waste management program. Currently, the Municipality does not have this ability.

Legal Opinion

Staff sought a legal opinion from Miller Thomson, LLP. to determine what authority the Municipality has to place restrictions on municipal, federal, and provincial elections and whether these restrictions would be permissible under the Canadian Charter of Rights and Freedoms (the Constitution Act, 1982). The legal opinion, in on file with the Manager of Legislative Services/Clerk. The following questions were asked, and the answers are below.

1. Does the Municipality have the authority to ban election signs on public property (Municipal (County included)), Provincial and Federal?

Although, the Municipality has the authority under the Municipal Act, 2001 to regulate signs and to regulate election signs on public property, it does not have the authority to outright ban election signs on public property. A bylaw prohibiting election signs on all public property would unduly impair the freedom of expression protected by the Charter and would be vulnerable to challenge under Section 2(b) of the Charter. This has been supported by case law in Ontario.

2. What would be the implications regarding enforcing this by-law on non-municipal property (i.e., private property (including vehicles/trailers, County Road Allowances)?

For the same reasons noted above, the Municipality does not have the authority to ban election signs on private property. They may provide for modest restrictions.

3. Does the Municipality have the authority to dictate what material an election sign is made of (i.e., use only compostable material)?

As more environmentally friendly signs are not readily available and not readily recyclable in the Municipality, a restriction on materials can be seen as essentially a ban and be challenged as noted in #1.

4. Can the Municipality restrict the timeframe for which election signs can be posted and the size and placement of those signs?

Modest restrictions to size and location have been upheld including for reasons of pedestrian and road safety. Reducing timeframes beyond what is permitted in federal and provincial legislation would be open to challenge.

5. Are there any implications regarding the restriction of election signs that would infringe on the Canadian Charter of Rights and Freedoms?

As noted above.

Staff also asked for a review of our current Election Sign By-law and legal counsel did not have serious concerns with the existing sign by-law.

Overall, the placement of election signs is protected by the right to freedom of expression under Section 2(b) of the Canadian Charter of Rights and Freedoms. Court cases have supported that a full ban on election signs is not within the authority of municipalities.

Although some municipalities have chosen to proceed with by-laws that provide for greater restrictions on election signs, the risks are that their by-law will be vulnerable to legal challenges based on the information above. Legal challenges such as these are costly and timely for the municipality and have no guarantee of success.

Review of service requests and enforcement data

During the elections held in 2022, the number of service requests from the public regarding elections signs was negligible. All requests to candidates to remove their signs from prohibited areas, collect signs that were no longer erect and to collect campaign signs after the election cut off, were dealt with quickly by the candidates.

Recommendations

Staff are recommending that the Election Sign By-law remain unchanged to continue to support candidate's right to freedom of expression as guaranteed under section 2(b) of the Charter of Rights and Freedom and to protect the Municipality from legal challenges.

To address the concerns regarding the environmental impacts Staff are recommending that during upcoming elections, the Municipality endeavor to promote environmentally friendly election sign materials and develop and disseminate education materials around the reuse, recyclability, and disposal of election signs. This may include partnering with other local municipalities to investigate bulk recycling on a one-time basis for election signs.

In addition, they recommend that the Municipality demonstrate leadership by reducing or eliminating the use of similar temporary signs as a method of communication.

Finally, the next Municipal Election will be held in 2026, and Staff are recommending a review of the Election Sign By-law in late 2025 – 2026 to determine if any changes are warranted.

Integrated Strategy 2020 - 2025

Financial Implications: None

Attachments: None

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