



City of Richmond

Report to Committee

To: General Purposes Committee
From: Cecilia Achiam
Director, Administration and Compliance
Doug Long
City Solicitor
Date: October 17, 2014
File: 03-0900-01/2014-Vol
01
Re: Signage on Private Property

Staff Recommendation

That the staff report titled Signage on Private Property, dated October 17, 2014, from the Director, Administration and Compliance and City Solicitor, be received for information.

Cecilia Achiam, MCIP, BCSLA
Director, Administration and Compliance
(604-276-4122)

Doug Long
City Solicitor
(604-276-4339)

REPORT CONCURRENCE
CONCURRENCE OF GENERAL MANAGER
APPROVED BY CAO

Staff Report

Origin

This report is in response to a Council referral from October 14, 2014:

1. That staff be directed to bring forward a report to the General Purposes Committee on whether or not the City of Richmond has the ability to regulate signage on private property; and
2. Whether or not that ability extends to mandating a percentage of English on signage on private property.

Background

Some signs in the City are in a language other than English. The combination of this fact and the circulation of promotional materials that are not in English have led to some public concerns about the need to regulate signs so they must include English.

Finding of Facts

This report provides an overview of the current Richmond bylaws dealing with signage, the permit process and general statistics of language on signs in the City for 2012-2014. In addition, attached is a legal opinion from Valkyrie Law Group LLP (Sandra Carter) (**Attachment 1**).

Existing City Sign Regulation

The City currently regulates exterior signs on public and private lands *via* the following:

1. **Richmond Sign Bylaw (No. 5560)** regulates the size, design and location of exterior signage. Regulated signage includes canopy, fascia and freestanding signs as well as signage promoting the sale or lease of real estate and directional signs on private properties. Some signs require a sign permit from the City (canopy and freestanding signs for example) prior to installation while other signs (directional signs and for sale or lease sign) do not require a permit. The Sign Bylaw does not:
 - a. apply to interior signs;
 - b. regulate promotional materials such as inserts in newspapers, posters in stores (even if visible externally); or
 - c. advertisements in bus shelters.

A diagram (**Attachment 2**) is included to illustrate typical current application of the Richmond Sign Bylaw (Bylaw No. 8713).

2. **Election and Political Signs (Bylaw No. 8713)** regulates the temporary signage erected during elections. This report does not address signs regulated under this bylaw.
3. **Rezoning and Development Permit Signs** describing the location and proposed development are required as part of the rezoning and development permit. All of these signs are in English. This report does not address signs required under these processes.

Sign Permit Overview and Application Process

Table 1 below summarizes the sign permit data since 2012. Over this period the City issued 874 sign permits with 705 (80.7%) in English only, 138 (15.8%) in mixed languages (English and another language) and 31 (3.5%) in Chinese only.

Year	English	Mixed languages	Chinese only	Total signs processed
2012	243	31	4	278
2013	236	71	14	321
September 2014	226	36	13	275
Totals	705 (80.7%)	138 (15.8%)	31 (3.5%)	874 (100%)

Table 1: Summary of Sign Permits (2012-October 2014)

The City recently conducted a visual inspection of approximately 1200 business signs located along the No 3 Rd. corridor between City Hall and Cambie Road. A significant number of these signs would appear not to have a valid sign permit and therefore would not be within the statistics above. Of the signs observed, approximately less than 1% were in Chinese only.

The Sign Bylaw application process requires that business operators apply to the City for a permit. The permit application has, since Spring, 2013, included the following:

“On each sign, please include the business name in English as a public courtesy”.

Further, on September 9, 2013, Council adopted the Richmond Social Development Strategy, which encourages that wording on business signage and/or City documentation prominently include the English. The implementation of this strategy is on-going.

Legal Analysis

Addressing referral #1, the City has the authority to regulate signage on private property.

The legal opinion of Sandra Carter of Valkyrie Law Group LLP is attached (**Attachment 1**) to this report. The following two excerpts, (the first being the opinion’s summary) address referral #2:

“In our opinion, a bylaw which imposed an English language content requirement, whether or not in addition to another language, would violate section 2(b) of the *Charter of Rights and Freedoms* (“Charter”) by infringing on the right to freedom of expression. It is not certain whether that infringement would be justifiable under section 1 of the Charter as being a reasonable limit on the right to freedom of expression. In order to be justifiable, the City would need to establish there is a compelling or sufficiently important issue to be remediated, that the City has the necessary legal authority to impose a restriction or condition on the content of signs, and that the proposed restriction or condition is both proportional to the issue to be remediated and only minimally impairs freedom of expression. Courts will be more likely to support the validity of a restriction

on freedom of expression if the regulator has undertaken both relevant studies of the issue and engaged in broad public consultation.”

“...To be justifiable as a limit on a Charter freedom, the City would need to establish that compelling health, safety, economic or social welfare objectives are at stake. A strong factual basis would need to be established that requiring English on signs would correct or achieve a significant and important problem or purpose which is not being met in the absence of that regulation.”

Financial Impact

None.

Conclusion

This report addresses the two referrals from the October 14, 2014 General Purposes meeting.



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(604-276-4122)



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- Att. 1: Legal opinion from Valkyrie Law Group LLP.
- Att. 2: Illustration of typical signs



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Date: October 17, 2014

Privileged and Confidential

City of Richmond
6911 No. 3 Road
Richmond, B.C. V6Y 2C1

Attention: Doug Long
City Solicitor

Dear Sirs/Mesdames:

Re: Language Requirements for Signs

You have asked us to consider whether the City of Richmond could legally implement a requirement that the content of some or all signs for which a sign permit is required pursuant to City bylaws be expressed in the English language in addition to any other language of the permit applicant's choice. The City is not suggesting that languages on signs other than English be in any way restricted or prohibited.

Summary

In our opinion, a bylaw which imposed an English language content requirement, whether or not in addition to another language, would violate section 2(b) of the *Charter of Rights and Freedoms* ("Charter") by infringing on the right to freedom of expression. It is not certain whether that infringement would be justifiable under section 1 of the Charter as being a reasonable limit on the right to freedom of expression. In order to be justifiable, the City would need to establish there is a compelling or sufficiently important issue to be remediated, that the City has the necessary legal authority to impose a restriction or condition on the content of signs, and that the proposed restriction or condition is both proportional to the issue to be remediated and only minimally impairs freedom of expression. Courts will be more likely to support the validity of a restriction on freedom of expression if the regulator has undertaken both relevant studies of the issue and engaged in broad public consultation.

Charter of Rights and Freedoms

Section 2(b) of the Charter protects the right of freedom of expression, which has been held by the courts to include the freedom to express oneself in the language of one's choice. While commercial freedom of expression has been held to be of lesser value than political, social or cultural expression, it remains a protected form of expression. The Charter applies to limit the ability of government, including municipal governments, from infringing on protected rights except where, pursuant to section 1 of the Charter, the infringement is justifiable in a free and democratic society.

The scope of freedom of expression was expressed by the Supreme Court of Canada in *Devine v. Quebec (A.G.)* [1988] 2 S.C.R. 790 as follows:

[T]he freedom of expression guaranteed by s. 2(b) includes the freedom to express oneself in the language of one's choice... That freedom is infringed not only by a prohibition of the use of one's language of choice but also by a legal requirement compelling one to use a particular language. As was said by Dickson J. (as he then was) in *R. v. Big M Drug Mart Ltd.* [1985] 1 S.C.R. 295, at p. 336, freedom of expression consists in an absence of compulsion as well as an absence of restraint (emphasis added).

An outright prohibition on the use of any particular language on signs would obviously violate section 2(b). A regulation requiring the use of a particular language would also violate freedom of expression as it would be a compulsion which affects that freedom.

Where a governmental action or regulation infringes a Charter freedom, it may nevertheless be legitimate if the proportionality test in section 1 of the Charter is met. The test has been articulated by the Supreme Court of Canada in *R. v. Oakes* [1986] 1 S.C.R. 103 and *Dagenais v. Canadian Broadcasting Corp.* 3 S.C.R. 835, through the court in *Galganov v. Russell (Township)* (2010) 325 D.L.R. (4th) 136 as follows:

- (a) The objective to be served by the measures limiting a *Charter* right must be sufficiently important to warrant overriding a constitutionally protected right or freedom.
- (b) The party invoking section 1 of the *Charter* must show the means to be reasonable and demonstrably justified. This involves the proportionality test:
 - (i) The measures must be fair and not arbitrary, carefully designed to achieve the objective in question and rationally connected to that objective;
 - (ii) In addition, the means should impair the right in question as little as possible;
 - (iii) Lastly, there must be proportionality between the deleterious effects of the by-law and the objective, and there must be a proportionality between the deleterious and salutary effects of the measures.

Assuming that the City could establish a sufficiently important objective to require that English be included on any or all signs, the regulation would need to impose a minimal impairment on freedom of expression and be proportional to the objective in terms of its positive and negative effects. To be justifiable as a limit on a Charter freedom, the City would need to establish that compelling health,

safety, economic or social welfare objectives are at stake. A strong factual basis would need to be established that requiring English on signs would correct or achieve a significant and important problem or purpose which is not being met in the absence of that regulation.

Regulatory Authority

Section 8(4) and 65 of the *Community Charter* provide specific authority for municipal regulation of signs:

- 8(4) A council may, by bylaw, regulate and impose requirements in relation to matters referred to in section 65.
- 65 The authority of a council under section 8(4) may be exercised in relation to the erection, placing, alteration, maintenance, demolition and removal of signs, sign boards, advertisements, advertising devices and structures.

It is important to note that these sections authorize the City to regulate the location, size, and specific physical features of signs, but do not directly provide authority for the regulation of the content of the signs. The imposition of a mandatory English component to the text of signs would likely be considered a content component.

In *Galganov v. Russell (Township)* 2012 ONCA 409 the issue of a bylaw which imposed both an English and French content requirement for signs was considered. The court concluded that authority for the bylaw was found in the general municipal power of the Township council to pass bylaws for matters respecting the economic, social and environmental well-being of the municipality. The *Community Charter* contains similar language in section 7(d) by including, within the purposes of a municipality, “fostering the economic, social and environmental well-being of its community”. However, more analysis would be required to determine whether a British Columbia court would reach the same conclusion that the specific sign regulatory power did not preclude a valid regulation of signs based on a broad, general power.

In *Galganov* (above) the Ontario Court of Appeal found that the imposition of a requirement that signs contain both English and French text infringed section 2(b) of the Charter, but that it was a justifiable and proportional restriction on freedom of expression given the objective of preserving the Town of Russell’s bilingual status. The Town did not restrict the inclusion of other languages in signs, and the argument presented by the appellant Galganov that the additional cost would be unreasonable was dismissed in the face of little or no evidence.

If the City, after completing any necessary studies, together with public consultation, was able to establish compelling reasons for a regulation requiring that English be included on signs, such a regulation might be legally supportable if it could meet both the section 1 Charter test for proportionality and minimal impairment, and the regulatory authority analysis under the *Community Charter*.

Implications for Existing Signs

If the City was to adopt a regulation imposing an English language requirement to signs, existing signs would likely remain unaffected. The B.C. Supreme Court decision in *Village of Cache Creek v. Hellner*

(2000) BCSC 1540 determined that the property owner would enjoy the non-conforming use protections of section 911 of the *Local Government Act* in the event that new bylaw provisions rendered the sign otherwise non-compliant. The court took the perspective that a sign constitutes a use of land. In addition, local governments in British Columbia do not have the authority to adopt bylaws with retroactive effect. There would likely be a strong argument that any new bylaw requirements would only apply to new signs and would have no effect on existing signs which were compliant, at the time of permit application, with the previously applicable bylaw provisions.

We hope the foregoing is helpful.

Yours truly,

A handwritten signature in cursive script, appearing to read "S. Carter".

Sandra Carter
Valkyrie Law Group LLP



Only signs on the exterior of the building are regulated by the Richmond Sign Bylaw (No. 5560). Advertisement and promotional material are not regulated under the Sign Bylaw