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# HALDIMAND COUNTY

## Report BME-03-2019 Flyer Distribution

For Consideration by Council in Committee on November 19, 2019

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### OBJECTIVE:

To provide Council with the options and implications regarding the regulation of flyer distribution.

### RECOMMENDATIONS:

1. THAT Report BME-03-2019 Flyer Distribution be received;
2. AND THAT, for the reasons outlined in Report BME-03-2019, staff be directed to implement Option 3.

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**Approved:** Craig Manley, MCIP, RPP, Chief Administrative Officer

### EXECUTIVE SUMMARY:

In the spring of this year, Council directed staff to provide a report on the regulation of flyer distribution, with a focus on options and best practices from other municipalities. This request came as a result of a number of Council members receiving complaints from residents within their wards. Staff first reported on flyer distribution in Report PED-BC-03-2015. At that time it was reported that Haldimand County does not have any regulatory controls regarding distribution of flyers. Council at that time chose not to pursue any type of regulatory control given the limited and localized nature of the issue and the challenges of enforcement. As requested by Council, the subject report lays out details relative to options available, practices of other municipalities, and presents the preferred approach to regulation via the use of a business licence by-law, should Council decide it wishes to go that route.

### BACKGROUND:

Staff first reported on this topic in Report PED-BC-03-2015 when it was reported that Haldimand County does not have any regulatory controls regarding distribution of flyers. It was noted by Council at the time that periodic issues have arisen when flyers are left in driveways resulting in litter or getting caught up in homeowner's snow blowers. Having considered different regulatory options available and challenges in terms of enforcing same, Council decided not to pursue any municipally lead measures.

At that time, Councillor Dalimonte worked directly with a distributor of flyers in order to respond to residents' complaints about how flyers were being delivered. It was understood that residents could request that flyers not be delivered to their homes. Staff have been advised that notwithstanding these requests being made by some homeowners, flyers are still being delivered regardless of their wish to opt out.

On May 13, 2019, staff were directed to report back to Council in Committee on the regulation of flyer distribution, including options and best practices from other municipalities. This report intends to outline these options in detail as well as the enforcement requirements/effectiveness. The report concludes with a preferred option for Council to consider—a business licence by-law—should the decision be to advance with regulatory controls for flyer distribution.

## **ANALYSIS:**

In 2015, staff researched the best practices of a number of municipalities. For this report staff expanded the best practices research by contacting a larger number of municipalities to determine if the distribution of flyers were regulated, if so how, and the extent of any complaints received. The results of that review are summarized in the sections below.

The authority for municipalities to enact by-laws are provided for in the *Municipal Act* (Act) and have not changed since staff reported on this topic back in 2015. In particular, the Act specifies that a municipality may pass by-laws:

- respecting the well-being of the municipality; including the health, safety and well-being of persons; and the protection of persons and property;
- to prohibit and regulate with respect to public nuisances including matters that, in the opinion of Council, are or could become or cause public nuisances;
- to provide for a system of licences with respect to a business; and
- to establish a system of fines for offences under the by-law.

The Act also authorizes that a municipality may create a by-law with a system of licences with respect to a business and such by-law may lay out the provisions in order to grant, revoke, suspend or impose conditions related to a licence.

Based on the above existing authorities, there are 2 basic approaches a municipality can take to regulate the distribution of flyers which are:

1. Regulatory By-law which either prohibits/regulates flyer delivery or amends an existing by-law which prohibits flyer littering; and
2. Business Licensing By-law which regulates the delivery of flyers.

The above approaches are laid out in more detail as Options 1 and 2 below.

### **Option 1 – Regulatory By-law**

The Act provides the authority for a municipality to enact by-laws to:

- a. prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become, or cause public nuisances, or
- b. respecting, in part, the health, safety and well-being of persons.

In this approach, Council could establish a new by-law or amend an existing by-law (e.g. clean yard by-law) specifically directed towards the distribution of flyers. Such a by-law could define flyers as litter, prohibit the distributing of flyers entirely or in part, or regulate the distribution of flyers according to a defined set of regulations. This approach would provide enforcement challenges to link the offence to the business. Essentially, the enforcement officer would need to observe an offense directly. As flyers can be delivered during any time of the day, including delivery in the evenings well after County staff core hours of enforcement operations, this creates a challenge given an officer or resident needs to witness and identify the person committing the act in order to prosecute. In addition to the above, County by-laws to be enforced after hours by the OPP are to be mutually agreed upon and reviewed

annually. Any by-law regulating flyer distribution would fail to satisfy the principles used to determine by-laws to be enforced by the OPP. These principles were established and outlined in Report CS-PSB-04-2014. For these reasons, enforcement of such a by-law would be difficult.

Through the best practices review, staff are not aware of any municipalities that have attempted to regulate flyer distribution in this manner. Considering the low volume of complaints, the enforcement requirements as outlined above and the administration requirements needed to manage such a by-law, staff do not recommend regulating flyer delivery via a municipal by-law.

## **Option 2 – Business Licensing By-law**

The Act also provides the authority for a municipality to provide for a system of licenses with respect to businesses, to prohibit the carrying on or engaging in the business without a licence, and to set out criteria to be met to maintain a license to operate in the municipality.

Over the years, Council has taken a step back when it comes to regulating businesses through a business licensing by-law and have typically engaged in by-laws that served as a tool to ensure that the general health and safety and consumer protection of the public is reasonably being protected such as Mobile Food Premises, Hired Vehicles or Public Entertainment. To that end, a number of years ago the County went through an exercise of reviewing its licensing practices to limit the circumstances where licensing is required. The point of this is, the County does not have an extensive business licensing system.

A licensing by-law can require specific businesses operating within Haldimand County to obtain and maintain a license in order to conduct their business. A licensing by-law puts the onus on the business to be accountable for certain activities of the business. Accountability for the business' activities are set out through a number of regulations and a licensee must comply in order to maintain the license and lawfully operate their business. In the case of a business licensing by-law that regulates flyers, regulations could include:

- A mandatory opt out procedure for any resident who does not want the delivery of the flyer;
- A strict prohibition on the delivery of flyers to any address listed on a 'do not deliver registry';
- Limiting the delivery of flyers only into a mail slot or mailbox/receptacle;
- Specifying the hours of the day flyers are allowed to be delivered/distributed;
- Prohibit affixing the flyer upon public property;
- Prohibit affixing the flyer upon any parked motor vehicle;
- Prohibit the licensee or anyone delivering the flyers on behalf of the licensee from crossing over private property for the delivery of mail/flyers to such premise;
- Provide the municipality a copy of the delivery route;
- Provide the municipality with the names of the persons delivering the flyers;
- Ensure that any person delivering flyers on behalf of the business, do so in accordance with the by-law, which essentially holds the business/licensee responsible for actions of employee or other person delivering.

Licensed businesses that fail to comply with the regulations prescribed for in a licensing by-law may be:

- Issued a fine; and
- should the non-compliance continue, brought before Council or a hearing, in order to determine if the Business License should be:

- Revoked
- Suspended, and/or
- Subject to conditions as a requirement of continuing to hold a licence.

To effectively respond to some of the enforcement challenges that would relate to flyer regulations for a licensed business, property owners/complainants may need to play a part, by documenting/witnessing a non-compliance and be willing to attend court or Council, as the case may be, to provide evidence of that non-compliance.

Like any other licencing category, in order to respond to potential issues regarding a licensee's non-compliance with the by-law, or the need to impose a condition in order to continue to hold or renew a licence, Council or a committee established to act on behalf of Council, (like the Property Standards Committee) would need to convene to consider the matter. This committee would be responsible for considering appeals, in order to provide the licensee the opportunity to respond to the issue and have their right to a license respecting their business determined through a hearing.

General principles to consider when taking advantage of the licensing authority previously found in the Act included: consumer protection, health and safety, and nuisances. Flyer distribution would fall into the nuisance category. Of the 22 municipalities staff researched, only 5 municipalities (Fort Erie, Windsor, Kitchener, Niagara Falls and St. Catharines) license businesses that distribute flyers/bills. Of those 5 municipalities, staff are advised that complaints with regards to the distribution of flyers are very slight. In Haldimand County there are very few businesses engaged in flyer distribution (i.e. 1 to 2 with one delivery per week).

While this sort of licencing system is feasible, significant staff time will be required to administer the licensing, to monitor the 'do not deliver registry' created and maintained by the licensee, and to enforce the licensing framework should violations be identified. Should Council choose to adopt a by-law to regulate the delivery of flyers, staff would recommended that such a by-law be in the form of a business licensing by-law, as it would be the most effective tool to regulate flyer deliveries and puts the onus on the distributor to comply, gives incentive to a business to operate the right way and gives a tool for the homeowner to ensure compliance and the ability to opt out. Staff would investigate also, if there would be a method to have the distributor set up an automatic reply that notifies the sender of a 'do not deliver', their message has been received and they will be entered into the 'do not deliver registry'. This could serve as additional evidence should a violation occur.

In making its decision, Council should consider the following:

- A business licencing by-law will require (potentially) significant staff time to develop, administer and enforce the regulatory system. Further, there are some limitations in terms of enforcement, as expressed earlier in this report;
- The breadth and scope of a licensing by-law – staff would recommend keeping such a by-law focused on regulations such as: i) mandatory opt out procedure for any resident who does not want the delivery of the flyer; ii) a strict prohibition on the delivery of flyers to any address listed on a 'do not deliver registry'; and, iii) limiting the delivery of flyers only into a mail slot or mailbox/receptacle;
- Complainants will need to be actively involved in the process to ensure success of compliance by monitoring, recording and (potentially) testifying in a hearing – i.e. enforcement is a joint effort and does not rest solely with staff; and
- Council, or a Committee of Council, will need to be tasked with dealing with appeals under the by-law.

### **Option 3**

Should Council determine that it does not wish to implement a business licensing by-law for any of the reasons above, there is an option outside of any regulatory regime that Council could also consider. In particular, staff could place a link to the distributor's website on the County's website such that residents may make complaints directly to the distributor. The local distributor of flyers has advised that they have this process in place with the City of St. Catharines. They also advise that they have an "opt out" policy should residents not wish to receive the flyers and that once a resident has indicated that they do not want delivery (which can be done via following the link provided from the County's website), it takes the distributor between 1 to 2 weeks to process the request through their system. This "opt out" could be accessed/acted on via the link to the distributor's website through the County's website. Further to this, staff could continue to encourage residents to make use of opt out options and to practice due diligence prior to undertaking certain activities (e.g. where possible check/clear area where flyers are typically located prior to snow blowing).

### **FINANCIAL/LEGAL IMPLICATIONS:**

Not applicable.

### **STAKEHOLDER IMPACTS:**

Haldimand County must attempt to provide harmonized service levels throughout the entire County in order to be consistent, fair and equitable.

### **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

### **ATTACHMENTS:**

None.