

ATTACHMENT 5



Staff Report for Decision

File Number: GOV-03

DATE OF MEETING SEPTEMBER 27, 2021

AUTHORED BY KAREN ROBERTSON, DEPUTY CITY CLERK

SUBJECT POLITICAL SIGNAGE REGULATIONS

OVERVIEW

Purpose of Report

To provide the Governance and Priorities Committee with an overview of how political signage is currently regulated and how the process may be streamlined going forward, including information and implications on possible options for limiting the number of signs or locations.

Recommendation

That the Governance and Priorities Committee recommend that Council:

1. direct staff to draft amendments to “Sign Bylaw 1987 No. 2850” and “Traffic and Highways Regulation Bylaw 1993 No. 5000” to remove references to political signage and incorporate the regulations into a single comprehensive Political Signage Bylaw.
2. include the following provision within the new Political Signage Bylaw:
Election/political signage may be placed on public or private property 30 days prior to an election or referendum and must be removed by the next working day following the electoral event.
3. That the Governance and Priorities Committee recommend that Council direct staff to:
 - a) include a provision in the political signage bylaw that limits the number of election signs to (insert number of signs here) per candidate, subject to the Ministry of Transportation and Highways approval to include “MoTI highways within Nanaimo” to its prohibited list in the Election and Referendum Signs and Posters Policy; or
 - b) retain the status quo of not limiting the number of political signs per candidate.

BACKGROUND

As outlined in the Governance and Priorities Matrix, Council requested an overview of how political signage is currently regulated and how the process may be streamlined going forward. As part of the report, Council also wanted further information on other regulatory options such as restricting the location of signs or limiting the number of signs per candidate.

DISCUSSION

How Political Signage is Currently Regulated:

Signage regulations on public property, private property, and highway rights of way are currently regulated as follows:

Political Signage on “Public” Property

Signage on public property is regulated under the following three bylaws:

- **Sign Bylaw No. 2850** (Section 6.11) which states that signs may be erected or placed without a permit, as follows:
 - temporary signs not exceeding 0.6m² (6.5ft²) area pertaining to drives or events of civic, philanthropic, educational or religious organizations, provided that said signs are posted only during said drive or no more than 30 days before said event and are removed no more than 7 days after an event. Signs located on or adjacent to any highway are subject to the provisions of City of Nanaimo “Traffic and Highways Bylaw 1993 No. 5000” and all amendments thereto.
- **Traffic and Highways Bylaw No. 5000** (Section 23) states that political campaign or charitable organization signs may be exhibited adjacent to any highway, upon approval of the Corporate Officer, provided that:
 - (a) the organization or political party posting or exhibiting them has filed a written undertaking with the Corporate Officer stating the signs will be removed prior to a date not more than 30 days from the date of the referendum or election;
 - (b) the person or political party posting or exhibiting the signs has filed with the Corporate Officer, security in the amount of \$200.00 in the form of cash or certified cheque, that he will remove all such signage prior to the date specified under (a);
 - (c) the signage is not erected on highway medians or affixed to utility poles or trees or in any manner, which obstructs the free passage or visibility of pedestrians or traffic.
- **The Parks, Recreation and Culture Regulation Bylaw No. 7073** (Section 5) states that no person shall do any of the following things in a park:
 - 5.14 place, erect, deliver, distribute, post, paint or affix by any means any sign, advertisement, handbill, poster, advertising card or device of any kind whatsoever except as provided for under the City’s Traffic and Highways Bylaw or in locations designated and authorized by the Director.

Parks: means play areas, play lots, playgrounds, play fields, trails, public squares, open spaces and other places including recreation or cultural facilities which are owned, possessed or operated by the City of Nanaimo and which are used, reserved or dedicated for public Parks, Recreation and Culture purposes.

Political Signage on “Private” Property:

Sign Bylaw No. 2850 (Section 6.6) states that political or campaign signs on private property may be erected without a permit on behalf of candidates for public office or measure on election ballots provided such signs are removed within 7 days after the election or referendum and conform with the Traffic and Highways Bylaw.

Highway Rights of Way (Provincial Jurisdiction)

Provincial Policy T-03/18 states that signs:

- May only be erected during the “campaign period” (as defined by Elections BC). The “campaign period” is defined as 28 days before the general election day and the day of the election for a total of 29 days
- Must be taken down the day following the general election
- Must be further from the road than standard traffic signs
- Cannot obstruct, simulate or be attached to any traffic control device (e.g. signs, sign posts, or traffic signal poles)
- Cannot in any way pose a traffic hazard
- Cannot be placed on bridges, overpasses, tunnels or other highway structures
- Election signs may not be placed on Highway 19 – Nanaimo Parkway, from Trans-Canada Highway to Island Highway

Synopsis of Where Signs Can be Located Based on the Above Regulations

Where Signs Can Be Placed	Where Signs Cannot be Placed
<ul style="list-style-type: none"> • Public property adjacent to a highway (without a permit) if they do not exceed 0.6m² (6.5ft²) • Private property (without a permit) if they do not exceed 0.6m² (6.5ft²) • Highway rights of way (with limitations) 	<ul style="list-style-type: none"> • Cannot be placed on highway medians or affixed to utility poles or trees or in any manner, which obstructs the free passage or visibility of pedestrians or traffic. • Parks, including playgrounds, play fields, trails, public squares, open spaces and other places including recreational facilities which are used, reserved, or dedicated for public parks, recreation, and culture purposes. • Bridges, overpasses, tunnels, or other highway structures. Cannot be placed on Highway 19 – Nanaimo Parkway, from Trans-Canada Highway to Island Highway

Existing Regulation Conflicts:

- No clear date when political signage can be placed on private property. Removal must be within seven days after the election.
- Political signs on public property must be removed 30 days after the election (under the Traffic and Highways Bylaw). The Sign Bylaw states that political signs must be removed within seven days after the election.
- Political signs on provincial rights of way must be removed one day after the election.

Options for Regulating Signs Going Forward and Associated Implications

Local governments have the ability to regulate political signage on public and private property provided freedom of expression rights are considered when it comes to limiting the number of signs per candidate or limiting locations.

Staff reviewed several other local government political sign regulations and found a variety of approaches. Almost all municipalities restrict political signs from locations such as parks and public facilities, as well as locations that could affect sightlines and safety of vehicles, cyclists, and pedestrians. Beyond these points of general agreement, the approaches range from restrictive (no political signs allowed on public property) to permissive (political signs allowed except where restricted for the standard reasons). Some municipalities have taken a compromise approach where political signs are only permitted at specific public property locations throughout the municipality and on private property. Regulating options are discussed in more detail below with consideration given to the associated legal, safety, technical, and enforcement implications.

Banning Political Signage:

The placement of election signs is protected by the right to freedom of expression under the Canadian Charter of Rights and Freedoms and a restriction on that freedom of expression must be justifiable as a reasonable limitation in order to be constitutional. Justification may include safety concerns, driver distraction, environmental considerations, and operational costs resulting from extraordinary enforcement.

The City of Surrey, as an example, adopted a Bylaw in 2019 that restricted all political signs on City owned property. The bar is high when considering a total ban; however, they were able to justify doing so as they were able to demonstrate that for years they had on-going issues with enforcement that cost the City of Surrey a considerable amount of bylaw enforcement time, effort, and operational expense. The supporting staff report cited that during the 2018 civic election, staff removed more than 1,800 illegally placed signs costing the municipality over \$160,000 (\$42,300 for Engineering staff and \$117,700 for Bylaw Enforcement). This amount included labour, equipment, disposal, and administration.

In looking at whether this is an option that the City could consider, the Manager of Bylaw Services was consulted, who reviewed the City's 2018 election sign complaints for the 30-day period both before and after the election. He conveyed that the complaints received were primarily related to visual blight (particularly where there are large volumes of traffic entering subdivisions such as Bowen Road and Hammond Bay Road) but most were not placed illegally and did not pose a safety risk. Four complaints were logged where a sign was obstructing traffic visibility and two complaints were received for sign violations within provincial highway rights of ways. He further noted that for these violations, a phone call to the candidate yielded a quick response. The General Manager of Engineering & Public Works indicated that their department also received some complaints related to safety hazards from signage placed in provincial highway rights of ways but once the candidate was contacted, the sign was removed quickly. Given this information, it would be challenging to justify a complete ban on signs on public property.

Regulating the Number of Signs or Location:

Some municipalities have gone the route of limiting the number of signs a candidate can place on public property and some restrict the number of public property locations. Other municipalities have put restrictions on both. It is important to note that restrictions on the number of signs or locations would not be applicable to highway rights of way (as this falls under the jurisdiction of the Ministry of Transportation and Highways (MoTI)) or to private property.

As with a complete ban, restrictions on the permissible number and locations for signs on public property must also be a justified limit to one's freedom of expression and as noted in the "Banning Political Signage" section above, justification must relate to safety concerns, driver distraction, environmental considerations, and operational costs resulting from extraordinary enforcement.

Listed below are a few examples of municipalities that have pursued sign limitations:

- The City of Quesnel (population 23,146) restricts each candidate to a maximum of six signs. Candidates must provide a map/list of the locations of where the signs are to be located and submit it to the Corporate Officer prior to placement.
- The City of Terrace (population 15,569) limits candidates to 30 signs each.
- The City of Penticton (population 33,761) restricts signs on public property to 13 specific locations but does not limit the number of signs per candidate.
- The City of Prince George (population 74,003) also restricts signs to 31 specific locations but not the number per candidate. With both Penticton and Prince George, the justification was based on the on-going enforcement efforts associated with hazards and blocked sight lines. The specified locations are treated on a first-come, first-served basis and once the locations are full, no other signs are allowed.
- The City of Delta (population 110,848), along with many other lower mainland municipalities that have experienced sign enforcement issues, have restrictions on both the number and locations but have not implemented a full ban. Delta allows signage within 18 specified public property locations and within those locations each candidate can have one sign per individual candidate, and where applicable, one sign as part of a multiple candidate team or elector organization.
- The City of Coquitlam (population 140,000) allows signs in 10 specific locations and each candidate is allowed one sign for each location.

Council previously enquired whether the number of signs per candidate could be limited in order to minimize unfairness associated with resourcing for an election, as some individuals may be unable to afford putting up political signs. Section 13 of the *Local Election Campaign Financing Act* already addresses election funding laws on maximum donations, election expenses, and spending limits, so affordability as a reason on its own may not be a constitutionally acceptable reason to limit someone's freedom of expression.

Environmental considerations would be an acceptable reason for the City of Nanaimo to consider limiting the number of signs per candidate, particularly given the fact that "Environmental Responsibility" is one of the strategic themes identified in Council's Strategic Plan and one of the key areas within that theme is to consider the environmental impact and climate change when making decisions. As such, considering restrictions on the number of signs to assist in limiting the amount of plastic, wood and metal utilized during sign construction would fall within that scope. It could also reduce the volume of signs that would need to be recycled or disposed of post-election (assuming that the candidate does not wish to retain their signs for a future election). Such limitations could also have spin-off effects such as assisting with reducing candidate campaign expenses making it easier for candidates to adhere to spending restrictions imposed by the *Local Elections Campaign Financial Act*. Having said that, Ministry staff from the Traffic Engineering Policy and Standards Branch confirmed that under Section 214 (1)(a) and 214(1)(b) of the *Motor Vehicle Act*, a municipal political signage bylaw as it relates to sign limits would not apply to Ministry rights of way despite being in municipal boundaries. This then makes limiting the number of signs much more challenging, particularly

given that the most popular locations for placement are within highway rights of way (see list below).

Pine and Third
Wakesiah and Third
Bowen and Labieux
Wakesiah and Bowen
Departure Bay and Hammond Bay
Mostar and Island Hwy N (highway right of way)
Rutherford and Island Hwy N (highway right of way)
Terminal and Island Hwy N (highway right of way)
Departure Bay and Island Hwy N (highway right of way)
Corner of Maffeo Sutton Park (highway right of way)
Pearson Park (highway right of way)
Turner and Island Hwy N (highway right of way)
Aulds and Island Hwy N (highway right of way)
Maki and Island Hwy S (highway right of way)
Cranberry and Island Hwy S (highway right of way)
Old Victoria Rd and Island Hwy S (highway right of way)

In speaking with other Corporate Officers where the municipality has imposed sign limits, highway rights of way have presented challenges. Having said that, Ministry staff conveyed that the Ministry would be receptive to adding "MoTI highways within Nanaimo" to the list of election sign prohibitions to the Ministry's Election and Referendum Signs and Posters Policy (see Attachment 1) to support Nanaimo should it wish to pursue sign limits. Approval would be subject to support by MoTI District staff in Nanaimo and at the time of drafting this report, policy branch staff were reaching out to the District staff to see if this was an option. Staff hope to have more information by the meeting date and if the response from the Ministry were favourable, imposing limits on signs would be more achievable. With this in mind, staff recommend that Council only consider limiting the number of signs per candidate if the Ministry is supportive of adding MoTI highways within Nanaimo's boundaries to the prohibition list.

Administrative and Enforcement Considerations:

Should the Ministry be supportive, and should Council wish to consider limits on the number of signs per candidate, staff envision utilizing the same process as the City of Quesnel whereby each candidate would file an application with the Corporate Officer (as is done now) but also provide a map/list of their proposed locations (prior to placement). The list would then be vetted by engineering staff for placement approval. Bylaw Enforcement staff would also be apprised.

It is worth mentioning that even if the Ministry is supportive of adding "MoTI highways within Nanaimo" to the prohibition list within the policy, it does not mean that enforcement in the Ministry highway rights of way would be downloaded to the City. It would still ultimately be up to the Ministry to enforce. However, Bylaw Enforcement staff does have a cooperative working relationship with the Ministry and has been, and would continue to, assist with complaints through a permission agreement (see Attachment 2). If supported, it is anticipated that enforcement would likely be easier as the rules governing signage would be consistent between the City and the Ministry and candidates would need to have their sign locations approved by the Corporate Officer when applying for sign placement approval.

With the above information in mind, staff would recommend that Council only consider placing limits on the number of signs per candidate if the Ministry is supportive of adding the MoTI highways within Nanaimo to its prohibition list.

Timeframe for Placement and Removal of Signs Prior to the Election

As highlighted earlier in the report, the timeframe outlined for placing signs on public property in the current bylaw is 30 days before the election, or referendum. Removal of signs varies between the two bylaws, is silent for removal from private property, and removal from Provincial rights of way is the next working day following the election or referendum.

To make it easier for candidates, staff, and members of the public, placement and removal dates should be consistent. Given that most signage is placed on highway rights of way, it is recommended that the City continue with a timeframe of 30 days prior to the general election but have the removal date be the next business day after the election so that we are following the Provincial Election Signs and Posters Policy as closely as possible.

Size of Political Signs

The City's Sign Bylaw considers political signage as temporary and signs cannot exceed 0.6m² (6.5ft²) without a permit. Other local government bylaws do allow larger signs (up to 3m²) without a permit but they also do not authorize political signs to exceed those dimensions. It does not include billboards or rooftops.

In terms of signs on personal property, the City currently does not regulate the size or number. Others such as the City of Vancouver stipulate that citizens are allowed one freestanding sign per address (not to exceed 3m²) and one window sign covering a maximum of 30% of the glass surface of the window, without a permit.

Staff has not provided any recommendations regarding implementing a change to the size of signs for public or personal property as it does not appear to be an issue. However, should Council wish to consider any changes to the proposed size of 6.5 ft.², a motion providing direction to staff on the size to include in the bylaw would be sought. To assist, staff has provided a few examples of other municipal bylaw political sign size regulations for comparison:

0.6m² (6.5 ft²) - City of Nanaimo's current bylaw
0.6m² (Coquitlam)
3m x 3m (Delta)
1.5 m² (Pitt Meadows)
1.2m² (Port Coquitlam)
3m² (Maple Ridge)
3m² (New Westminster)
2.5m² (White Rock)

Options for Moving Forward

Recommendation No. 1 - Due to conflicting bylaw provisions, staff is seeking approval to remove the political signage regulations from the Sign Bylaw and Traffic and Highways Bylaw and incorporate them into a new Political Signage bylaw. The creation of a comprehensive Political Signage bylaw would both simplify and add clarity to the regulatory framework that governs election signs, enabling a better understanding of election sign regulations by candidates and members of the public alike.

Recommendation No. 2 - Staff is also seeking approval to have placement and removal dates for signs on public and private property that compliment the Ministry's Election and Referendum Signs and Poster Policy.

Recommendation No. 3 - Council may wish to consider limiting the number of signs per candidate for environmental reasons if the Ministry is agreeable to adding the "MoTI highways within Nanaimo" to its prohibition list. If so, staff would be seeking direction on the sign limit (recommendation 3 (a)). If it is not supported by the Ministry, it would be challenging to impose sign limitations given the most popular locations are within provincial jurisdiction. In this instance, Council may wish to continue with the status quo (recommendation 3(b)).

Once direction has been provided, staff would come back to Council with amendment bylaws to the Traffic and Highways Bylaw and Sign Bylaw to remove reference to political signage, and bring forward a new comprehensive Political Signage Bylaw for consideration.

OPTIONS

Option 1:

That the Governance and Priorities Committee recommend that Council:

1. direct staff to draft amendments to "Sign Bylaw 1987 No. 2850" and "Traffic and Highways Regulation Bylaw 1993 No. 5000" to remove references to political signage and incorporate the regulations into a single comprehensive Political Signage Bylaw.
 2. include the following provision within the new Political Signage Bylaw:
Election/political signage may be placed on public or private property 30 days prior to an election or referendum and must be removed by the next working day following the electoral event.
 3. That the Governance and Priorities Committee recommend that Council direct staff to:
 - a) include a provision in the political signage bylaw that limits the number of election signs to (insert number of signs here) per candidate, subject to the Ministry of Transportation and Highways approval to include "MoTI highways within Nanaimo" to its prohibited list in the Election and Referendum Signs and Posters Policy; or
 - b) retain the status quo of not limiting the number of political signs per candidate.
- The advantage to this option is that having one comprehensive Political Signage bylaw with consistent regulations for political signage will provide clearer direction to members of the public on the rules and regulations and to staff when administering the bylaw.
 - Not addressing the inconsistencies will continue to cause issues with interpretation of the regulations.
 - The regulations would apply to local, provincial, and federal elections.
 - There are no financial implications associated with this option.

Option 2:

That the Governance and Priorities Committee provide alternate direction.

Attachments

Attachment 1 – Election and Referendum Signs and Poster Policy – T-03/18

Attachment 2 – Ministry Permission Letter for Sign Removal

SUMMARY POINTS

- Council requested an overview of how political signage is currently regulated and how the process may be streamlined going forward including information and implications on possible options for limiting the number of signs or locations.
- Local governments have the ability to regulate political signage on public and private property provided freedom of expression rights are considered when it comes to limiting the number of signs per candidate or limiting locations.
- Staff reviewed several other local government political sign regulations and found a variety of approaches
- Staff are seeking approval to remove the political signage regulations from the Sign Bylaw and Traffic and Highways Bylaw and incorporate them into a new Political Signage bylaw and seeking direction on whether Council wishes to pursue limiting political signage.

Submitted by:

Karen Robertson,
Deputy City Clerk

Concurrence by:

Sheila Gurrie,
Director of Legislative Services

Dave LaBerge,
Manager of Bylaw Services

Bill Corsan,
Director, Community Development

Dale Lindsay,
General Manager, Development Services

Bill Sims,
General Manager, Engineering & Public Works

Attachment 1 – Election and Referendum
Signs and Poster Policy – T-03/18

Technical Circular T-03/18

Date: September 7, 2018

To: All HQ Directors: Operations, Planning & Major Projects
All Regional Directors
All Engineering Directors
All Senior Traffic Engineers
All District Managers Transportation
All Project Managers
Manager, Provincial Sign Program
All MoT Highway Maintenance Contractors

Subject: Election and Referendum Signs and Posters Policy

Purpose:

This Technical Circular supersedes T-02/18 regarding election and referendum signing procedures found within the Policy Manual for Supplemental Signs.

Background:

An election sign for Federal and Provincial elections is a sign, poster or other notice posted during the period between the issue of a writ of election and general voting day, by a political candidate, political party, or election advertising sponsor registered with Elections BC or Elections Canada.

An election sign for general local elections (<https://www2.gov.bc.ca/gov/content/governments/local-governments/governance-powers/general-local-elections>), including municipality, regional district, specified parks board, local community commission, boards of education or the Islands Trust, is a sign, poster or other notice posted by a registered political party, candidate or election advertising sponsor. Signs may be placed only during the campaign period (campaign period as defined by Election BC) and must be removed on the day following the end of the electoral event.

A referendum sign for Federal, Provincial or Municipal referenda is a sign, poster or other notice posted during the period between the issue of a writ or order of referendum and the polling day for the referendum, by a referendum proponent, opponent, or referendum advertising sponsor registered with a Municipality, Election BC (<https://elections.bc.ca/>) or Elections Canada (<http://www.elections.ca/home.aspx>).

A recall or initiative sign for a Provincial recall petition, initiative petition or initiative vote is a sign, poster or other notice posted between the beginning of a recall petition period, initiative petition period or initiative vote period and the end of the respective period as described in the Recall and Initiative Act, by a proponent, opponent, authorized participant, or a recall or initiative advertising sponsor registered with Elections BC.

Policy:

The Ministry conditionally allows signs in relation to election, referendum, initiative vote, initiative petition and recall petition (henceforth collectively referred to as "election signs") on highway rights-of-way, with the exception of any major highway structures and highways specified in the policy. Only individuals and groups registered in accordance with this policy may post signs on highway rights-of-way.

Procedures:

Election signs must:

- Only be installed by an individual or organization that is registered with a Municipality, Elections BC or Elections Canada to sponsor advertising, such as a political candidate, political party, registered advertising sponsor, a proponent or opponent, or an authorized participant.
- Identify the owner of the sign, and a BC telephone number or BC mailing address at which the owner may be contacted.
- Only be installed during the campaign period as established by Elections BC for local elections, or by the drop/issue of a writ for federal/provincial government elections and must be removed on the day following the end of the electoral event.
- Be further from the road than standard traffic signs.

Election signs must not:

- Obstruct, simulate or be attached to any traffic control device (e.g. signs, sign posts or traffic signal poles),
- In any way pose a traffic hazard,
- Be placed on bridges, overpasses, tunnels or other highway structures,
- Belong to unregistered individuals or groups (i.e., any group or individual that is not a political candidate, political party, or other authorized participant registered with Elections BC, Elections Canada, or a Municipality as required).

PROHIBITIONS

Election signs may not be placed on:

- Highways within Provincial Parks,
- Highway 1, from Horseshoe Bay to Hope;
- Highway 5, from Hope to Kamloops;
- Highway 19, from Duke Point Ferry Terminal to Trans-Canada Highway;
- Highway 19 – Nanaimo Parkway, from Trans-Canada Highway to Island Highway;
- Highway 19, Parksville to Campbell River;
- Highway 91 and 91A;
- Highway 99, from the US border to Horseshoe Bay
- Highway 17, from Tsawwassen Ferry Terminal to Highways 1/15
- Highway 17A, from Highway 17 to Highway 99; and
- Highway 97C, from Aspen Grove to Peachland



Attachment 2 – Ministry Permission Letter
for Sign Removal

April 10th, 2019.

City of Nanaimo

Attention: Cheryl Kuczerski, Supervisor – Bylaw Enforcement

Re: Removal of temporary signs on Ministry of Transportation right of way

Please accept this letter as permission for the City of Nanaimo to remove unauthorized signs on Ministry of Transportation right of way along Highway 1 and Highway 19a within the City of Nanaimo's territorial limits, subject to the following:

- This permission is valid until otherwise specified by a Ministry representative.
- The City of Nanaimo may remove all temporary signs (e.g. sandwich boards, staked framing lumber signs) and place in storage in a city owned/controlled facility;
- Signs will be stored with reasonable care for a period of 30 days to allow owners time to reclaim them;
- The City of Nanaimo will attempt to notify sign owners of removal;
- The City of Nanaimo to assume all costs of removal of signs, including any remedies sought by sign owners;
- The City of Nanaimo shall at all times accept full responsibility for any accident that may occur or damage that may be done to any person or property whatsoever caused directly or indirectly by this activity, and shall save harmless and keep indemnified the Crown from all claims and demands whatsoever in respect of these works.

Should you have any further questions, please contact the Ministry of Transportation and Infrastructure's Front Desk in Nanaimo at 250-751-3246 and ask to speak to the Area Manager for Nanaimo.

Thank you,

Stu Johnson
Area Manager, Nanaimo

Cc: Stefan Yancey, Operations Manager